

Draft – July 2022

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SCOTTISH STATUTORY INSTRUMENTS

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202[X] No. [X]

**HARBOURS, DOCKS, PIERS AND FERRIES**

Argyll and Bute Council (Oban) Harbour Revision Order 202[X]

*Made* - - - - - 202[X]

*Coming into force* 202[X]

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**Commented [A1]:** All HROs must have a contents section. This is an example from a previous HRO to be used as a guide.

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## SCHEDULE

### SCHEDULE — REPEALS

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1) and (3) of the Harbours Act 1964<sup>(1)</sup> and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>(2)</sup>.

In accordance with section 14(2) of that Act—

- (a) this Order is made following a written application to Ministers by the Argyll and Bute Council (“the Council”) being the authority engaged in improving, maintaining or managing the harbour, and

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<sup>(1)</sup> 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), Schedule 6, paragraphs 2, 3, 4(1) and 14 and Schedule 12 and the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

<sup>(2)</sup> Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

- (b) the Ministers are satisfied that the making of this Order is desirable in the interests of securing the improvement, maintenance, or management of the harbour in an efficient and economical manner and facilitating the efficient and economic transport of goods and passengers by sea.

The provisions of paragraph 17 of that Schedule<sup>(3)</sup> have been satisfied. [No objections to the application have been made.] [All objections to the application have been withdrawn or paragraph 18(1A) of that Schedule<sup>(4)</sup> applied in respect of those objections.] [No representations under paragraph 10(2)(f)[, or 10A(4)(d),] of that Schedule have been made.]

[[In accordance with paragraph 18(1C) of that Schedule<sup>(5)</sup>, ]Ministers have caused an inquiry to be held under paragraph 18(1B) of that Schedule<sup>(6)</sup>.]

[[In accordance with paragraph 18(1C) of that Schedule<sup>(7)</sup>,] Ministers have given to a person who made an objection an opportunity of appearing before and being heard by a person appointed by Ministers under paragraph 18(1B) of that Schedule<sup>(8)</sup>.]

In accordance with paragraph 19(1) of that Schedule<sup>(9)</sup>, Ministers have considered—

- (a) any objections made and not withdrawn,
- (b) [the report of the person who held the inquiry] [the report of the person appointed for the purpose of hearing an objector under paragraph 18 of that Schedule], and
- (c) [any written representations submitted to Ministers by the applicant or any objector in elaboration of the application or, as the case may be, objection].

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<sup>(3)</sup> Paragraph 17 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(g).

<sup>(4)</sup> Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).

<sup>(5)</sup> Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).

<sup>(6)</sup> [Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).]

<sup>(7)</sup> Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).

<sup>(8)</sup> [Paragraph 18 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(h).]

<sup>(9)</sup> Paragraph 19(1) of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport (Scotland) Act 2005 (asp 12), section 46 and the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(i).

In accordance with paragraph 19(2) of that Schedule<sup>(10)</sup>, Ministers have decided [to make this Order in the form of the draft submitted to them] [to make this Order with modifications [which do not appear to Ministers substantially to affect the character of the Order] [which appear to Ministers substantially to affect the character of the Order and in accordance with paragraph 21 of that Schedule<sup>(11)</sup>—

- (d) Ministers have taken such steps as appear to Ministers to be sufficient and reasonably practicable for informing the applicant and other persons likely to be concerned, and
- (e) the period which Ministers thought reasonable for consideration of, and comment upon, the proposed modifications by the applicant and those other persons has expired]].

PART I  
PRELIMINARY

**Citation and commencement**

1. This Order may be cited as the Argyll & Bute Council (Oban) Harbour Revision Order [202x] and comes into force on the day after the day on which it was made.

**Interpretation**

2. In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847<sup>12</sup>;

"CMAL" means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ;

"the Council" means Argyll and Bute Council;

"Ferry Operator" means the operator (if any), from time to time, of the Clyde and Hebrides Ferry Services on behalf of the Scottish Ministers;

"general direction" means a direction given by the Council under article 18;

"government department" includes any part of, or any member of the staff of, the Scottish Administration which shall have the same meaning as in section 126(6) of the Scotland Act 1998;

<sup>(10)</sup> Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

<sup>(11)</sup> Paragraph 21 of Schedule 3 was substituted by S.I. 1999/3445.

<sup>12</sup> 1847 c.27.

**Commented [A2]:** Need to refer to all acts mentioned in the hRO for example the 1964 act means.....

“Harbour” means the harbour at Oban comprised within the Harbour Limits;

"Harbour Limits" means the limits of the Harbour as described in article 4 and Schedule 1 to this Order and shown on the Harbour Map;

"Harbour Map" means the map referred to in article 4, and forming Schedule 2 to this Order;

“Harbour Master” means any person appointed as such by the Council and includes that person’s deputies and assistants and any other person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of Harbour Master;

“Harbour Premises” means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises from time to time vested in or occupied or administered by the Council as part of the Harbour Undertaking, including the existing works which are all situated within the Harbour Limits;

“Harbour Undertaking” means the Harbour Undertaking of the Council at Oban;

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mooring” includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels;

"Railway Pier" means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises at Oban within the limits prescribed by section 14 of the Scottish Transport Group (Oban Quay) Order Confirmation Act 1974;

“Relevant Ferry Services” means any services associated with the delivery of the Clyde and Hebrides Ferry Services, or any ferry services as may succeed the Clyde and Hebrides Ferry Services, on behalf of the Scottish Ministers;

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies means the person who manages that property, or those rights and interests;

“special direction” means a direction given by the Harbour Master under article 20;

“vessel” means a ship, boat, or craft of any description and includes any other thing constructed or adapted for floating, or hovering, on or being submersed in water (whether permanently or temporarily).

#### **Incorporation of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42 to 46, 51, 54, 55, 58, 63 to 65 and 74 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the Harbour; and

(b) for the definition of the word “vessel” in section 3 (*interpretations in this and the special Act*) there shall be substituted the definition of that word in article 2;

(c) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

(d) section 65 (Harbour Master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

#### **PART II - POWERS**

##### **Harbour jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the Harbour Map together with the Harbour Premises as shown on the Harbour Map.

(2) In the event of any discrepancy between the boundaries of the Harbour as described in schedule 1 of this Order and the boundaries shown on the Harbour Map, the description shall prevail.

##### **Harbour Master**

5. The Council may employ and appoint a Harbour Master.

**General powers and duties in respect of the Harbour**

6.—(1) The Council may improve, maintain, regulate, manage, mark and light the Harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the Harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

**Powers with respect to land, buildings, harbour facilities etc.**

7.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the Harbour.

(2) The Council may for the purposes of the Harbour Undertaking manage, use or develop land belonging to it as it thinks fit.

**Power to dredge**

8.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the Harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>13</sup>) from time to time dredged or removed by it from the Harbour.

(3) No dredged materials shall be deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

**Restriction of works and dredging**

9.—(1) No person other than the Council shall in the Harbour—

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<sup>13</sup> 1995 c. 21

(a) construct, place, alter, renew or maintain any works; or

(b) dredge,

unless that person has contracted with the Council to do so.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice the Council may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

#### **Declaration of draught, etc. of vessel**

**10.**—(1) The Harbour Master may require the master of a vessel entering, leaving or intending to enter or leave the Harbour to state the length overall and draught maximum of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

#### **Provisions as to damage**

**11.**—(1) This article applies to any damage caused to any work or property of the Council in the Harbour—

(a) by any person who contravenes any provision of this Order or any other enactment relating to the Harbour; or

(b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person’s employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.



(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;

(b) any right of the Council under any other enactment, agreement or rule of law; or

(c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the Harbour by the Council.

#### **Obstruction of Harbour Master, etc.**

12. Any person who intentionally obstructs the Harbour Master or any other person carrying out duties under this Order or any enactment relating to the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Boarding of vessels**

13. The Harbour Master may enter and inspect a vessel in the Harbour, subject to producing his authority where requested—

(a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, including the enforcement thereof; or

(b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the written notice shall have annexed to it a copy of this article.

#### **Vessels adrift**

14.—(1) The owner or master of a vessel adrift in the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on the part of that person.

#### **Power to appropriate parts of the Harbour, etc.**

**15.—(1)** Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the Harbour or any land, works, buildings, machinery, equipment or other property within the Harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the Harbour, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the Harbour Master, and—

(a) the Harbour Master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

(3) In exercising its powers to appropriate or set apart any part of the Harbour under paragraph (1), the Council shall have regard to the facilitation of—

(a) the public right of navigation in the Harbour; and

(b) any public rights of way affecting the Harbour,

such that the Council shall not restrict such rights more than is necessary for the purpose for which the part of the Harbour is appropriated or set apart.

#### **Power to enter into arrangements to provide supplies**

**16.** The Council may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the Harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the Harbour.

#### **Moorings**

**17.—(1)** The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the Harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided by the Council under paragraph (1), or moored to land owned or leased by the Council, such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the Harbour.

(5) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the Harbour except under and in accordance with the terms and conditions of a licence granted under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Any licence granted under paragraph (4) shall be valid only for a period of one year commencing with the date on which it takes effect.

(7) The Council may charge a reasonable fee for the grant of a licence under this article.

#### General directions

**18.**—(1) The Council may after consultation with the Royal Yachting Association and Harbour users give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the Harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) requiring the master of a vessel to give to the Harbour Master information relating to the vessel reasonably required by the Harbour Master;
- (f) prohibiting entry into or movement in the Harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the Harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) regulating the speed of vessels within the Harbour;
- (h) specifying the precautions to be taken in respect of apparatus, machinery and equipment; and
- (i) prohibiting or restricting use of fires or lights.

**Commented [A3]:** Need to add in NLB, CMAL/CalMac and MCA.

(2) A general direction under this article may apply—

(a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction;

(b) to the whole of the Harbour or to a part designated, or for which the designation is provided for, in the direction; or

(c) at all times or at times designated, or for which the designation is provided for, in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Council may after consultation with the Royal Yachting Association and Harbour users revoke or amend any general direction.

#### **Publication of general directions**

19.—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the Harbour, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Council to be appropriate.

#### **Special directions to vessels**

20.—(1) The Harbour Master may give a special direction under this article—

(a) requiring a vessel anywhere within the Harbour to comply with a requirement made in or under a general direction;

(b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the Harbour;

(c) for securing that a vessel move only at certain times or during certain periods;

(d) prohibiting the mooring of a vessel in any particular part or parts of the Harbour;

(e) regulating or requiring the movement, mooring or unmooring of a vessel;

(f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the Harbour; and

(g) requiring the removal from any part of the Harbour of a vessel if—

(i) it is on fire;

(ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;

(iii) it is making an unlawful use of the Harbour or interfering with the reasonable use or enjoyment of the Harbour by other vessels or persons;

(iv) its removal is necessary to enable maintenance or repair work to be carried out at Harbour Premises or to premises adjacent thereto.

(2) A special direction may be given in any manner considered by the Harbour Master to be appropriate.

(3) The Harbour Master may revoke or amend a special direction.

#### **Failure to comply with special directions**

**21.** The master of a vessel who fails without reasonable excuse to comply with a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Enforcement of special directions**

**22.—(1)** Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the Harbour Master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the Harbour Master may proceed as if the direction had been given and not complied with; but the Harbour Master shall not do so unless, after reasonable enquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel as if they were a charge of the Council in respect of the vessel.

#### **Master's responsibility in relation to directions**

**23.** The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

**Removal of obstructions other than vessels, vehicles or wreck**

**24.—**(1) The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the Harbour other than—

(a) a vessel or vehicle; or

(b) a wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2) shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council, possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the date when the notice is served.

(7) The Council shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence.

#### Removal of vehicles

**Commented [A4]:** Not clear what power is being used to undertake this?

25.—(1) If a vehicle is left—

(a) in any part of the Harbour Premises where the parking of vehicles is prohibited by notice erected by the Council; or

(b) in any place within the Harbour Premises where it is likely to obstruct or interfere with the use of the Harbour Premises,

the Council may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1)(b) shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Council in exercise of the powers of this article causes a vehicle to be removed, the reasonable expenses of and incidental to its removal and safe custody shall be recoverable by the Council from the person responsible.

(4) If the Council in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002(8), at that person's last known address or registered address, or the address where the vehicle is ordinarily kept, notice that the Council has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the Harbour Premises, and shall be endorsed on any tickets issued to persons leaving vehicles at the Harbour Premises.

(6) In paragraph (3), "person responsible", in relation to a vehicle, means—

(a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless the owner of the vehicle shows that the vehicle was put there without that person's knowledge or involvement;

(b) any person by whom it was put in that place; or

(c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978<sup>(9)</sup> in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the Harbour Premises.

**Power to remove goods**

**26.**—(1) If any goods are left on or in any part of the Harbour Premises the Council may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Council may cause them to be removed to the Council or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, “goods” includes equipment of any description.

**Powers to make byelaws, etc.**

**27.**—(1) The Council may from time to time make byelaws for the efficient management and regulation of the Harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the Harbour and the docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);

(b) regulating the admission to, and the movement within, and the departure of vessels from, the Harbour, or the removal of vessels and for the good order and government of vessels whilst within the Harbour;

(c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the Harbour;

(c) regulating the berthing and mooring of vessels within the Harbour and their speed and the use of tugs within the Harbour;

(d) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the Harbour;



- (e) regulating the conduct of all persons in the Harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (f) regulating the placing and maintenance of moorings within the Harbour;
- (g) preventing and removing obstructions or impediments within the Harbour;
- (h) regulating the use of ferries within the Harbour;
- (i) regulating in the Harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
- (j) regulating the use of personal water craft in the Harbour;
- (k) regulating the holding of regattas and other public events in the Harbour;
- (l) regulating or prohibiting the activities in the Harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);
- (m) prohibiting persons in or entering the Harbour, or any part thereof, from smoking therein;
- (n) regulating the movement and parking of vehicles within the Harbour;
- (o) regulating the exercise of the powers vested in the Harbour Master;
- (p) making the carrying out of specified Harbour operations, or the conduct of persons in the Harbour, subject to the approval (with or without conditions), control or direction of the Harbour Master, and for authorising the Harbour Master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;
- (q) regulating the hours during which any gates, entrances or outlets to or from the Harbour or any part of the Harbour shall be open;
- (r) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the Harbour;
- (s) regulating the use of cranes, weighing machines, weights and measures belonging to the Council, and the duties and conduct of weighers and meters employed by the Council;
- (t) regulating the holding of regattas and other public events in the Harbour;
- (u) regulating or preventing the use of fires and lights within the Harbour;

(v) the conservation of the natural beauty of all or any part of the Harbour or of any of the fauna, flora or geological or physiographical features in the Harbour and all other natural features; and

(w) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the Harbour of historic or architectural significance.

(3) For the purposes of sub-paragraph (2)(j) above “personal water craft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

(a) by means of a handlebar operated linkage system (with or without a rudder at the stern); or

(b) by the person or persons riding the craft using their body weight for the purpose; or

(c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b).

(4) Byelaws made under this article may—

(a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 3 on the standard scale;

(b) relate to the whole of the Harbour or Harbour Premises, or to any part thereof; or

(c) make different provisions for different parts of the Harbour or Harbour Premises, or in relation to different classes of vessels.

(5) Existing byelaws in respect of the Harbour will remain in place as if they had been made under this order.

#### **Confirmation of byelaws**

**28.—**(1) Byelaws made by the Council under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by the Council to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

(a) once in the Edinburgh Gazette; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the Harbour is situated.

(3) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the Harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.

(5) During the period of one month after the date of first publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on request.

### PART III CHARGES

#### **Charges other than ship, passenger and goods dues**

**29.**—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the Harbour such reasonable charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such reasonable charges for services and facilities provided by it or on its behalf in relation to the Harbour as it may from time to time determine.

(3) In paragraph (2) "charges" does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

#### **Liability for charges**

**30.**—(1) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner or master of the vessel;

(b) goods, shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

#### **Power to grant exemptions, rebates, etc., in respect of charges**

**31.**—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the Harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

#### **Account of goods**

**32.**—(1) When goods are to be unshipped within the Harbour the master of the vessel containing them shall—

(a) within 24 hours of the arrival of the vessel within the Harbour, deliver to the Harbour Master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;

(b) if required so to do by the Harbour Master, give to the Harbour Master 24 hours' notice of the time at which any such goods are to be unshipped.

(2) Before any person ships goods on board of a vessel within the Harbour, that person shall give to the Harbour Master a true account signed by that person, of the kinds, quantities and weights of the goods.

(3) If any difference arises between the Harbour Master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the Harbour Master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Recovery of charges by seizure, etc.**

33.—(1) If default is made in the payment of any charge in respect of a vessel or its cargo the Harbour Master may, on producing if so required his or her Council, board the vessel with such assistance as the Harbour Master deems necessary and take, seize or arrest the vessel and the tackle and cargo thereof, and if the charge remains unpaid for 7 days after the seizure or arrestment may cause any of the matters so seized or arrested to be sold, and the surplus (if any) of the proceeds of sale over the amount of the charge and over the expenses of taking, keeping, appraising and selling the matters aforesaid shall be paid to the master on demand.

(2) If any dispute arises as to the amount of charge due, or of the expenses of seizure or arrestment by virtue of this article, the Harbour Master may detain the matters so seized or arrested until the amount aforesaid, subject to any costs of the application payable by either party, has been determined upon application to the sheriff.

#### **Security for charges**

34. The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the Harbour or goods on or in Harbour Premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

#### **Liens for charges**

35.—(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect of the amount.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

#### **Refusal to pay charges for landing place, etc.**

36. An officer of the Council may prevent a vessel from using a landing place or any other facilities provided by the Council, if the master of the vessel refuses to pay the charges for such use.

#### **Exemptions from charges**

37.—(1) Except in so far as may be agreed between the Council and the Government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at the Harbour Premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the Harbour without mooring or making use of any facilities provided by the Council.

#### **Conditions as to payment of charges**

**38.**—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### **PART IV MISCELLANEOUS**

##### **Reserve funds**

**39.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the Harbour Undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect

of that year carry to the credit of a reserve fund in respect of the Harbour Undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

(a) in making good to the general fund any deficiency at any time arising in the income of the Council from the Harbour Undertaking;

(b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the Harbour Undertaking;

(c) in defraying any expenditure in connection with the Harbour Undertaking for which capital is properly applicable or in providing money for repayment of loans;

(d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the Harbour Undertaking; or

(e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the Harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the Harbour Undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

#### **Saving for Commissioners of Northern Lighthouses**

40. Nothing in this Order shall prejudice or derogate from any of the rights, duties, or privileges of the Commissioners of Northern Lighthouses.

#### **Saving for CMAL and Ferry Operator**

**41.—**(1) Noting in this order shall prejudice or derogate from any of the rights, duties, or privileges of CMAL in connection with its functions as harbour authority in respect of the Railway Pier.

(2) Where any exercise by the Council of its powers under article 4 (power to maintain etc. the existing works), article 8 (power to dredge), article 18 (general directions) or article 27 (power to make byelaws) is likely to impact materially on the regular operations of CMAL or the Ferry Operator within the Harbour Limits in connection with the operation of the Relevant Ferry Services, the Council shall, prior to exercising such powers, consult with CMAL and the Ferry Operator and shall have due regard to any representations made by CMAL and/or the Ferry Operator.

(2) Except in the case of an emergency, special directions issued under article 20 (special directions to vessels) shall not apply to any ferry operated by the Ferry Operator in connection with the Relevant Ferry Services.

(3) No ship, passenger or goods dues shall be levied by the Council in respect of any vessel, or any passengers or goods, on any vessel, which enters the Harbour to take access to, and egress from, the Railway Pier but the Council shall be entitled to levy ships, passengers and goods dues in respect of any vessel that (except in the case of emergency)—

(a) anchors or moors in the Harbour; or

(b) otherwise uses any of the Harbour Premises,

prior to, or after, any use of the Railway Pier.

#### **Crown rights**

**42.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, Council or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government department having management of that land or (as the case may be) the relevant person; or

(c) belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department without the consent in writing of that Government department.



(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

**Repeal**

**43.** The enactment mentioned in the first and second columns of schedule 2 is repealed to the extent specified in the third column of that schedule.

SCHEDULE 1 – HARBOUR LIMITS

**Commented [A5]:** To be completed

SCHEDULE 2 – HARBOUR MAP

**Commented [A6]:** Map needs to be a separate document for full consultation so would suggest for ease of reference to separate from the start

SCHEDULE 3 – REPEALS and REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
[ ]	Oban Harbour Order 1862	Articles [ ]
[ ]	Oban Harbour Order 1864	Articles [ ]
[ ]	Piers and Harbour Orders Confirmation (No.5) Act, 1896	Whole Act in so far as applicable to the Harbour

## CMAL Comments

### CMAL General Comments

- In our comments we refer to articles from “The Lochboisdale and Gasay Port (Harbour Empowerment) Order 2016” by way of examples. We have abbreviated this to the LB 2016 Order
- In our comments we refer to articles from “The Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019. We have abbreviated this to the Tarbert 2019 Order
- We refer to Argyll and Bute Council as the Council

**Draft – July 2022**

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#### SCOTTISH STATUTORY INSTRUMENTS

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**202[ ] No. [ ]**

#### **HARBOURS, DOCKS, PIERS AND FERRIES**

The Argyll and Bute Council (Oban) Harbour Revision Order 202[ ]

*Made* 202[ ]

*Coming into force* 202[ ]

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964<sup>(14)</sup> and all other powers enabling Ministers to do so.

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<sup>(14)</sup> 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), schedule 6, paragraphs 2, 3, 4(1) and 14 and schedule 12 and the Transport and Works Act 1992 (c.42), schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>15</sup>.

In accordance with section 14(2) of the Act—

- (a) this Order is made following a written application to Ministers by Argyll and Bute Council ("the Council") being the Council engaged in improving, maintaining or managing the Harbour; and
- (b) except in so far this Order is made for achieving objects mentioned in section 14(2A) of the Act, Ministers are satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the Harbour.

[Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act<sup>16</sup>. No objections to the application have been made.]

[In accordance with paragraph 19(2) of that Schedule<sup>17</sup>, Ministers have decided to make this Order in the form of the draft submitted to them.]

## PART I PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Argyll & Bute Council (Oban) Harbour Revision Order [202x] and comes into force on the day after the day on which it was made.

### Interpretation

2. In this Order—

**Commented [A7]:** Schedule 3 – repeals and revocations identifies that articles will be repealed or revoked from the Oban Harbour Orders 1862 and 1864. If they are only partially to be repealed, then the original orders need to be mentioned and referenced in this section.

CMAL will require details of what is to be repealed / revoked and copies of the original legislation as referred to in Schedule 3.

As an example of how the legislation could be referenced can be seen on the Tarbert 2019 Order article 1.

<sup>(15)</sup> Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

<sup>(16)</sup> Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c).

<sup>(17)</sup> Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847<sup>18</sup>;

"CMAL" means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ;

"the Council" means Argyll and Bute Council;

"Ferry Operator" means the operator (if any), from time to time, of the Clyde and Hebrides Ferry Services on behalf of the Scottish Ministers;

"general direction" means a direction given by the Council under article 18;

"government department" includes any part of, or any member of the staff of, the Scottish Administration which shall have the same meaning as in section 126(6) of the Scotland Act 1998;

"Harbour" means the harbour at Oban comprised within the Harbour Limits;

"Harbour Limits" means the limits of the Harbour as described in article 4 and Schedule 1 to this Order and shown on the Harbour Map;

"Harbour Map" means the map referred to in article 4, and forming Schedule 2 to this Order;

"Harbour Master" means any person appointed as such by the Council and includes that person's deputies and assistants and any other person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of Harbour Master;

"Harbour Premises" means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises from time to time vested in or occupied or administered by the Council as part of the Harbour Undertaking, including the existing works which are all situated within the Harbour Limits;

"Harbour Undertaking" means the Harbour Undertaking of the Council at Oban;

"land" includes land covered by water, any interest in land and any servitude or right in, to or over land;

**Commented [A8]:** The definition of "Harbour Master" is included within section 2 of the 1847 Act, the above definition is a duplication and is contrary to the definition within section 2 of the 1847 Act, see article 3(1) below. It needs to be clarified and clear which definition is relevant.

**Commented [A9]:** Can clarification be given on the definition of "works" it is used throughout the draft order, in terms of the 1847 Act (section 2) the term works usually refers to works authorised in the order. We would comment however that it is a term used frequently in similar legislation with no clear clarification or definition.

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<sup>18</sup> 1847 c.27.

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mooring” includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels;

“Railway Pier” means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises at Oban within the limits prescribed by section 14 of the Scottish Transport Group (Oban Quay) Order Confirmation Act 1974;

“Relevant Ferry Services” means any services associated with the delivery of the Clyde and Hebrides Ferry Services, or any ferry services as may succeed the Clyde and Hebrides Ferry Services, on behalf of the Scottish Ministers;

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies means the person who manages that property, or those rights and interests;

“special direction” means a direction given by the Harbour Master under article 20;

“vessel” means a ship, boat, or craft of any description and includes any other thing constructed or adapted for floating, or hovering, on or being submersed in water (whether permanently or temporarily).

**Commented [A10]:** This definition seems to be limiting the area of jurisdiction around the Railway Pier to the limits set out in the order mentioned, however section 14 of the order refers also to the North and South Pier limits and refers to “Oban Piers Order 1896”. This order seeks to establish new limits for the Council in which the harbour areas defined in the 1896 order are not relevant.

The 1974 Act does not allow for the structures built through the HRO of 2005 which provided for the 2nd linkspan. It seems reasonable to provide a limit from the CMAL infrastructure that provides a suitable harbour area to manage their activities, however it would be simpler to identify this in an agreed plan rather than referring to old legislation that does not reflect the current infrastructure.

The LB 2016 Order defines the “Inner Harbour Authority” and this seems as sensible approach perhaps supported by co-ordinates and a plan.

The “Harbour Limits” are also defined earlier in this section, which is contrary to what is described in this definition as to the Councils interests.

**Commented [A11]:** Suggest that the definition for “vessel” should clearly include seaplanes in the event the seaplane returns, a comprehensive definition of “vessel” can be seen in the Tarbert 2019 Order in article 2 (1).

### Incorporation of the Harbours, Docks, and Piers Clauses Act 1847

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42 to 46, 51, 54, 55, 58, 63 to 65 and 74 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

**Commented [A12]:** Suggest it is worth adding the table below to provide a written summary of the 1847 clauses incorporated in the draft order.

The following table provides a summary of the 1847 clauses incorporated in this draft order

Section	Summary of Provision
1	Extent of Act. The relevant clauses of the 1847 Act is only incorporated into legislation if specifically detailed in any Act, HEO or HRO
2	Interpretation in this Act- Clarification of specific expressions used.



Section	Summary of Provision
	<p><b>"the special Act"</b> means any Act which shall authorise the construction or improvement of a harbour, dock or pier and which incorporates the 1847 Act;</p> <p><b>"the prescribed limits"</b> means the distance measured from the harbour, dock or pier or other local limits beyond the harbour, dock or pier within which the powers of the harbour master, pier master etc shall be authorised to exercise;</p> <p><b>"the lands"</b> means the lands which shall by the Special Act be authorised to be taken or used for the purposes thereof.</p> <p><b>"the harbour, dock or pier"</b> shall mean the harbour, dock or pier and the works connected therewith, by the special Act authorised to be constructed;</p> <p><b>"the harbour master"</b> shall mean with reference to any such harbour the harbour master and with reference to any such dock, the dock master, and with reference to any such pier, the pier master, respectively appointed by virtue of this or the special Act and with respect to all Acts authorised or required to be done by such harbour master, dock master or pier master, shall include assistants of every such harbour master, dock master or pier master;</p> <p><b>"the undertakers"</b> shall mean the persons by the special Act authorised to construct the harbour, dock or pier or otherwise carrying into effect the purposes of the Special Act;</p>
3	<p>Interpretations in this and the special Act.</p> <p>This provides relevant definitions for terms and expressions used in the 1847 Act</p> <p>The word : "person": shall include corporation, whether aggregate or sole:</p> <p>The word : "lands" shall include messuages, lands, tenements, and hereditaments, or heritages, of any tenure:</p> <p>The word : "vessel" shall include ship, boat, lighter, and craft of every kind, and whether navigated by steam or otherwise:</p> <p>The word : "master" when used in relation to any vessel, shall be understood to mean the person having the command or charge of the vessel for the time being:</p> <p>The word : "owner", when used in relation to goods, shall be understood to include any consignor, consignee, shipper, or agent for sale or custody of such goods, as well as the owner thereof:</p> <p>The word : "goods" shall include wares and merchandize of every description, and all articles in respect of which rates or duties are payable under the special Act:</p> <p>The word : "rate" shall mean any rate or duty or other payment in the nature thereof payable under the special Act:</p>

**Commented [A13]:** refers to this order

**Commented [A14]:** Refers to the Harbour as defined in section 2 of the draft order

**Commented [A15]:** This is to mean the Council as defined in section 2 of the draft order

**Commented [A16]:** This is redefined in article 2 of the draft order, we have commented previously on the definition.

Section	Summary of Provision
	<p>The expression : “the collector of rates” shall mean the person appointed by the undertakers to collect the rates by the special Act authorized to be levied by them, and shall include the assistants of such collector:</p> <p>The word : “month” shall mean calendar month:</p> <p>The expression : “superior courts,” where the matter submitted to the cognizance of the superior courts arises in England or Ireland, shall mean her Majesty’s superior courts of record at [ the Royal Courts of Justice ] 1 or [ Belfast ] 2 , as the case may require, [...]3 and where such matter arises in Scotland, shall mean the Court of Session:</p> <p>[...]4 [...]5</p> <p>The word : “sheriff” shall mean [ the sheriff principal of the sheriffdom ] 6 [...]7 in Scotland [...]3 in which the matter submitted to the cognizance of the sheriff arises, and shall include the [ sheriff ] 8 [ . ] 4 [...]3</p> <p>[...]4 [...]9</p>
4	<p>Short title of this act</p> <p>“The Harbours, Docks, and Piers Clauses Act 1847.”</p>
33	Obligation to keep harbour open to public on payment of rates.
34	Power to appoint a collector to enter vessels to ascertain rates payable.
35	Master to report arrival of vessel to harbour master within 24 hours of arrival. Penalty for neglect.
37	Master of vessel to give accounts of goods intended to be unshipped within the limits of the harbour within 12 hours of arrival.
38	Penalty on masters giving no account, or a false account of goods to be unshipped.
39	Shippers to give account of goods intended to be shipped. Penalty for giving no account or a false account.
42	If goods are to be shipped rates on the goods are payable before shipment and if goods are to be unshipped rates payable before removal of goods from harbour and before expiration of two months after they were unshipped.
43	Penalty on evading payment of rates.
44	Power to enter any vessel in event of default of payment of tonnage rates to demand payments and arrest vessel, tackle, furniture etc until payment made. Arrested items can be sold if tonnage rates outstanding after 7 days.
45	Power to enter any vessel in event of default of payment of any goods rates to demand payments and distrain or arrest those goods or other goods on the vessel. And may sell goods to pay rates.

Section	Summary of Provision
46	Disputes concerning rates or charges occasioned by distress or arrestment to be settled by Sheriff.
51	Power to appoint a Harbour Master to work within the limits of the harbour.
54	Penalty on harbour master for misbehaviour in exercise of powers.
55	Penalty on any person offering bribes to harbour master or other harbour, dock or pier officer and on such persons taking bribes.
58	Power to remove or relocate vessels, not moored or placed according to the directions of the Harbour Master.
63	Penalty on vessels lying near the entrance of the harbour or dock without permission of the harbour master.
64	Power to order removal of vessel for the purpose of harbour works if not removed by master after 3 days' notice.
65	<p>Power to remove any vessel where master cannot be found or if he refuses to do so as per notice.</p> <p><b>The full paragraph is as follows:-</b></p> <p><i>65. Harbour master may remove such vessel if the master thereof neglect or refuse so to do. If the master of such vessel cannot be found, or if he neglect or refuse to remove the same, as required by the said notice, the harbour master may remove such vessel to such station as he shall select, and the expences of such removal shall be paid to the undertakers by the owner of the said vessel or the master thereof:</i></p> <p><i>[ Provided always, that previous to the repair of harbour, dock, or pier, which shall require the removal of the vessels therefrom, the harbour master shall give three days notice of such repair and of the necessity for such removal to the collector and comptroller of the Customs of the district within which the harbour, dock, or pier is situate, or which shall be specified for that purpose in the special Act, and cause a like notice to be affixed on some conspicuous part of such custom house and of the office of the undertakers.]</i></p>
74	Power to detain vessel until security/cost are given covering cost of any damage done to harbour or works etc.

**Commented [A17]:** removed

(2) In construing the provisions of the 1847 Act as incorporated with this Order—

**Commented [A18]:** This section adjusts the relevant 1847 Act clauses, we have indicated these in the comments and in italics in the relevant sections in the above inserted table.

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the Harbour; and

**Commented [A19]:** See comments above under section 2 of the 1847 Act

(b) for the definition of the word “vessel” in section 3 (*interpretations in this and the special Act*) there shall be substituted the definition of that word in article 2;

**Commented [A20]:** See comments above under section 3 of the 1847 Act, we have commented on the definition of “vessel” in article 2

(c) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

**Commented [A21]:** This updates the basis of fine to a more recent standard scale

(d) section 65 (Harbour Master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

**Commented [A22]:** This removes the last section from the original article 65, see above table, section removed is in square brackets [ .....]

## PART II - POWERS

### Harbour jurisdiction

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the Harbour Map together with the Harbour Premises as shown on the Harbour Map.

(2) In the event of any discrepancy between the boundaries of the Harbour as described in schedule 1 of this Order and the boundaries shown on the Harbour Map, the description shall prevail.

**Commented [A23]:** Whilst the proposed harbour limits have been discussed with CMAL, can an updated version of this be shared, as this is important to the operation of the CMAL harbour.

**Commented [A24]:** This is a duplication as this power is covered in section 51 of the 1847 Act. Suggest this should be removed or the inclusion of section 51 of the 1847 Act should be removed. If you rely on the 1847 Act, you also rely on the definition of the Harbour Master in the 1847 Act or you adjust the definition. This order also defines the Harbour Master, this is different to that which is included in the 1847 Act.

### Harbour Master

5. The Council may employ and appoint a Harbour Master.

**Commented [A25]:** CMAL would like to seek additional protective provisions within this section. Refer to article 5 (3), (4), (5), (6) of the LB 2016 order. Summarised below: -

- safety management system
- making good any financial losses
- priority methodology for the passage of lifeline ferry services and general marine traffic management
- not restricting access to the CMAL harbour

### General powers and duties in respect of the Harbour

6.—(1) The Council may improve, maintain, regulate, manage, mark and light the Harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the Harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

In addition, consideration should be given to formalising the Councils requirement to consult with CMAL at agreed intervals with respect to: -

- Navigation Safety
- Making of Byelaws and GD
- General Safety
- Operational changes
- Harbour developments

The council should commit to take due regard to the outputs of the consultation

**Powers with respect to land, buildings, harbour facilities etc.**

7.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the Harbour.

(2) The Council may for the purposes of the Harbour Undertaking manage, use or develop land belonging to it as it thinks fit.

**Power to dredge**

8.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the Harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>19</sup>) from time to time dredged or removed by it from the Harbour.

(3) No dredged materials shall be deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

(b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

**Restriction of works and dredging**

9.—(1) No person other than the Council shall in the Harbour—

(a) construct, place, alter, renew or maintain any works; or

(b) dredge,

unless that person has contracted with or licenced by the Council to do so.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice the

**Commented [A26]:** Can clarity be given on the meaning/interpretation of “no longer required by the Council”.

Suggest there should also be some requirement to consult with CMAL (and other key stakeholders). Should also consider requiring agreement with the Harbour Master.

The Harbour areas (schedule 2) should also include details of the “operational land” to which this article applies.

**Commented [A27]:** Suggest this should refer to and be limited to the operational land that should be identified in plans in schedule 2

**Commented [A28]:** Recommended amendment

**Commented [A29]:** Request that there should be a provision included here to allow CMAL to dredge within its harbour area or approaches but to consult the Council, refer to LB 2016 Order article 7 (4)

<sup>19</sup> 1995 c. 21

Council may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

#### Declaration of draught, etc. of vessel

10.—(1) The Harbour Master may require the master of a vessel entering, leaving or intending to enter or leave the Harbour to state the length overall and draught maximum of his vessel.

**Commented [A30]:** Suggest this could be included in General directions, as it would provide more flexibility should additional information be required.

(2) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

#### Provisions as to damage

11.—(1) This article applies to any damage caused to any work or property of the Council in the Harbour—

**Commented [A31]:** Can you provide more clarity on the meaning of the words "work & property"

(a) by any person who contravenes any provision of this Order or any other enactment relating to the Harbour; or

(b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person’s employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;

(b) any right of the Council under any other enactment, agreement or rule of law; or

(c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the Harbour by the Council.

**Commented [A32]:** Could clarification be provided if there are any byelaws in place and if so, please provide a copy.

**Obstruction of Harbour Master, etc.**

12. Any person who intentionally obstructs the Harbour Master or any other person carrying out duties under this Order or any enactment relating to the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

**Boarding of vessels**

13. The Harbour Master may enter and inspect a vessel in the Harbour, subject to producing his authority where requested—

(a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, including the enforcement thereof; or

(b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the written notice shall have annexed to it a copy of this article.

**Vessels adrift**

14.—(1) The owner or master of a vessel adrift in the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on the part of that person.

**Power to appropriate parts of the Harbour, etc.**

15.—(1) Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the Harbour or any land, works, buildings, machinery, equipment or other property within the Harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the Harbour, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the Harbour Master, and—

(a) the Harbour Master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

(3) In exercising its powers to appropriate or set apart any part of the Harbour under paragraph (1), the Council shall have regard to the facilitation of—

(a) the public right of navigation in the Harbour; and

(b) any public rights of way affecting the Harbour,

such that the Council shall not restrict such rights more than is necessary for the purpose for which the part of the Harbour is appropriated or set apart.

#### **Power to enter into arrangements to provide supplies**

16. The Council may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the Harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the Harbour.

#### **Moorings**

17.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the Harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided by the Council under paragraph (1), or moored to land owned or leased by the Council, such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the Harbour.

(5) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the Harbour except under and in accordance with the terms and conditions of a licence granted under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**Commented [A33]:** Request that consideration is given to adding a specific provision regarding lifeline ferry access.

**Commented [A34]:** Suggest there should be clarification that appropriate consents from Crown Estates or whoever owns the seabed should be referenced.



(6) Any licence granted under paragraph (4) shall be valid only for a period of one year commencing with the date on which it takes effect.

(7) The Council may charge a reasonable fee for the grant of a licence under this article.

#### General directions

18.—(1) The Council may after consultation with the Royal Yachting Association and Harbour users give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the Harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) requiring the master of a vessel to give to the Harbour Master information relating to the vessel reasonably required by the Harbour Master;
- (f) prohibiting entry into or movement in the Harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the Harbour or the approaches of any vessel seeking refuge from stress of weather;
- (g) regulating the speed of vessels within the Harbour;
- (h) specifying the precautions to be taken in respect of apparatus, machinery and equipment; and
- (i) prohibiting or restricting use of fires or lights.

(2) A general direction under this article may apply—

- (a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction;
- (b) to the whole of the Harbour or to a part designated, or for which the designation is provided for, in the direction; or
- (c) at all times or at times designated, or for which the designation is provided for, in the direction,

**Commented [A35]:** Given general directions are a powerful method to control and manage the safety of navigation in the harbour without needing statutory consent, further consideration should be given to extending the scope of powers of general directions to provide the appropriate methods to manage navigational safety. See following examples lifted from the Tarbert 2019 Order: -

- for prohibiting entry into or navigation within any of the main channels within the harbour or the approaches leading to it during any temporary obstruction of the channels,
- for regulating the admission to, and the movement within, and the departure of vessels from, the harbour, or the removal of vessels, and for the good order and government of vessels whilst within the harbour,
- for regulating the navigation, berthing, and mooring of vessels within the harbour,
- for regulating the use of ferries within the harbour,
- for regulating the use within the harbour of yachts, sailing boats, sailboards, rowing boats, rowing punts, pleasure craft and other small craft,
- for regulating the launching of vessels within the harbour,
- for regulating the use of tugs within the harbour.

It would seem prudent to perhaps discuss with all key stakeholders the extend of general direction powers that may be needed. This would use the collective knowledge and experience across harbour users to ensure all and any potential situations are covered (in Oban such as the seaplane)

**Commented [A36]:** It would be appropriate to include the RYA Scotland and the UK Chamber of shipping to the consultees. This section (1) should also make clear the duty to consult with other representatives of users of the harbour, refer to Tarbert 2019 Order, article 27. CMAL request that an explicit requirement to consult with them as a nested Harbour Authority is also included.

**Commented [A37]:** This is similar to article 10 (1), perhaps include article 10 (1) in this section?

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Council may after consultation with the Royal Yachting Association and Harbour users revoke or amend any general direction.

**Commented [A38]:** See comments under section (1) of this article.

#### **Publication of general directions**

19.—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the Harbour, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

**Commented [A39]:** Perhaps consider adding website publication. It would be very unusual to charge for copies of general directions. It is in the councils interest to ensure that they are made widely available.

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Council to be appropriate.

#### **Special directions to vessels**

20.—(1) The Harbour Master may give a special direction under this article—

- (a) requiring a vessel anywhere within the Harbour to comply with a requirement made in or under a general direction;
- (b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the Harbour;
- (c) for securing that a vessel move only at certain times or during certain periods;
- (d) prohibiting the mooring of a vessel in any particular part or parts of the Harbour;
- (e) regulating or requiring the movement, mooring or unmooring of a vessel;
- (f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the Harbour; and
- (g) requiring the removal from any part of the Harbour of a vessel if—
  - (i) it is on fire;
  - (ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;

(iii) it is making an unlawful use of the Harbour or interfering with the reasonable use or enjoyment of the Harbour by other vessels or persons;

(iv) its removal is necessary to enable maintenance or repair work to be carried out at Harbour Premises or to premises adjacent thereto.

(2) A special direction may be given in any manner considered by the Harbour Master to be appropriate.

(3) The Harbour Master may revoke or amend a special direction.

#### **Failure to comply with special directions**

**21.** The master of a vessel who fails without reasonable excuse to comply with a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Enforcement of special directions**

**22.—(1)** Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the Harbour Master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the Harbour Master may proceed as if the direction had been given and not complied with; but the Harbour Master shall not do so unless, after reasonable enquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel as if they were a charge of the Council in respect of the vessel.

#### **Master's responsibility in relation to directions**

**23.** The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

#### **Removal of obstructions other than vessels, vehicles or wreck**

**24.—(1)** The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the Harbour other than—

(a) a vessel or vehicle; or

(b) a wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2) shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council, possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the date when the notice is served.

(7) The Council shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence.

#### **Removal of vehicles**

**25.—(1)** If a vehicle is left—

(a) in any part of the Harbour Premises where the parking of vehicles is prohibited by notice erected by the Council; or

(b) in any place within the Harbour Premises where it is likely to obstruct or interfere with the use of the Harbour Premises,

the Council may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1)(b) shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Council in exercise of the powers of this article causes a vehicle to be removed, the reasonable expenses of and incidental to its removal and safe custody shall be recoverable by the Council from the person responsible.

(4) If the Council in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002(8), at that person's last known address or registered address, or the address where the vehicle is ordinarily kept, notice that the Council has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the Harbour Premises, and shall be endorsed on any tickets issued to persons leaving vehicles at the Harbour Premises.

(6) In paragraph (3), "person responsible", in relation to a vehicle, means—

(a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless the owner of the vehicle shows that the vehicle was put there without that person's knowledge or involvement;

(b) any person by whom it was put in that place; or

(c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(9) in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the Harbour Premises.

**Power to remove goods**

26.—(1) If any goods are left on or in any part of the Harbour Premises the Council may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Council may cause them to be removed to the Council or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, “goods” includes equipment of any description.

#### **Powers to make byelaws, etc.**

27.—(1) The Council may from time to time make byelaws for the efficient management and regulation of the Harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the Harbour and the docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);

(b) regulating the admission to, and the movement within, and the departure of vessels from, the Harbour, or the removal of vessels and for the good order and government of vessels whilst within the Harbour;

(c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the Harbour;

(d) regulating the berthing and mooring of vessels within the Harbour and their speed and the use of tugs within the Harbour;

(e) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the Harbour;

(f) regulating the conduct of all persons in the Harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;

(g) regulating the placing and maintenance of moorings within the Harbour;

(h) preventing and removing obstructions or impediments within the Harbour;

(i) regulating the use of ferries within the Harbour;

**Commented [A40]:** Suggest that regulating these activities should be included in general directions provisions article 19 of this order as it relates to the management of navigational safety, it would be inappropriate to duplicate this as it may cause conflict if trying to implement or change general directions.

**Commented [A41]:** Suggest that regulating these activities should be included in general directions provisions article 19 of this order as it relates to the management of navigational safety, it would be inappropriate to duplicate this as it may cause conflict if trying to implement or change general directions.  
Also, note typo of duplication of clause referencing.

**Commented [A42]:** This is covered in article 17 of the draft order, therefore suggest it is not necessary to include here.

**Commented [A43]:** Suggest this should clarify that it does not apply to goods as referenced in article 26 in the draft order.

**Commented [A44]:** Suggest that regulating these activities should be included in general directions provisions article 19 of this order as it relates to the management of navigational safety, it would be inappropriate to duplicate this as it may cause conflict if trying to implement or change general directions

(h) regulating in the Harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;

**Commented [A45]:** Suggest that regulating these activities should be included in general directions provisions article 19 of this order as it relates to the management of navigational safety, it would be inappropriate to duplicate this as it may cause conflict if trying to implement or change general directions

(i) regulating the use of personal water craft in the Harbour;

**Commented [A46]:** Suggest that regulating these activities should be included in general directions provisions article 19 of this order as it relates to the management of navigational safety, it would be inappropriate to duplicate this as it may cause conflict if trying to implement or change general directions

(k) regulating the holding of regattas and other public events in the Harbour;

(l) regulating or prohibiting the activities in the Harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);

(m) prohibiting persons in or entering the Harbour, or any part thereof, from smoking therein;

(n) regulating the movement and parking of vehicles within the Harbour;

(o) regulating the exercise of the powers vested in the Harbour Master;

**Commented [A47]:** Can clarification be provided as the powers vested in the Harbour Master are set out in the relevant legislation

(p) making the carrying out of specified Harbour operations, or the conduct of persons in the Harbour, subject to the approval (with or without conditions), control or direction of the Harbour Master, and for authorising the Harbour Master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;

**Commented [A48]:** Consideration should be given to the terminology and use of "direction" as this may conflict with general or special directions. If this is to cover general or special directions (with respect to the safety of navigation), suggest it is more appropriate to include in article 18 of this order.

(q) regulating the hours during which any gates, entrances or outlets to or from the Harbour or any part of the Harbour shall be open;

(r) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the Harbour;

(s) regulating the use of cranes, weighing machines, weights and measures belonging to the Council, and the duties and conduct of weighers and meters employed by the Council;

(t) regulating the holding of regattas and other public events in the Harbour;

(u) regulating or preventing the use of fires and lights within the Harbour;

(v) the conservation of the natural beauty of all or any part of the Harbour or of any of the fauna, flora or geological or physiographical features in the Harbour and all other natural features; and

(w) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the Harbour of historic or architectural significance.

(3) For the purposes of sub-paragraph (2)(j) above “personal water craft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

(a) by means of a handlebar operated linkage system (with or without a rudder at the stern); or

(b) by the person or persons riding the craft using their body weight for the purpose; or

(c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b).

(4) Byelaws made under this article may—

(a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 3 on the standard scale;

(b) relate to the whole of the Harbour or Harbour Premises, or to any part thereof; or

(c) make different provisions for different parts of the Harbour or Harbour Premises, or in relation to different classes of vessels.

(5) Existing byelaws in respect of the Harbour will remain in place as if they had been made under this order.

**Commented [A49]:** Refer to previous comment, can existing byelaws please be provided. If there are none in place, this section is not relevant.

#### **Confirmation of byelaws**

**28.—(1)** Byelaws made by the Council under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by the Council to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

(a) once in the Edinburgh Gazette; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the Harbour is situated.

(3) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the Harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.



(5) During the period of one month after the date of first publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on request.

### PART III CHARGES

#### **Charges other than ship, passenger and goods dues**

**29.**—(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the Harbour such reasonable charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such reasonable charges for services and facilities provided by it or on its behalf in relation to the Harbour as it may from time to time determine.

(3) In paragraph (2) “charges” does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

#### **Liability for charges**

**30.**—(1) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner or master of the vessel;

(b) goods, shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

#### **Power to grant exemptions, rebates, etc., in respect of charges**

31.—(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the Harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

#### **Account of goods**

32.—(1) When goods are to be unshipped within the Harbour the master of the vessel containing them shall—

(a) within 24 hours of the arrival of the vessel within the Harbour, deliver to the Harbour Master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;

(b) if required so to do by the Harbour Master, give to the Harbour Master 24 hours' notice of the time at which any such goods are to be unshipped.

(2) Before any person ships goods on board of a vessel within the Harbour, that person shall give to the Harbour Master a true account signed by that person, of the kinds, quantities and weights of the goods.

(3) If any difference arises between the Harbour Master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the Harbour Master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Recovery of charges by seizure, etc.**

33.—(1) If default is made in the payment of any charge in respect of a vessel or its cargo the Harbour Master may, on producing if so required his or her Council, board the vessel with such assistance as the Harbour Master

**Commented [A50]:** This draft order incorporates section 37 of the 1847 Act and this article is very similar. However the 1847 act requires 12 hours' notice to the Harbour Master and not 24 hours. Suggest this should be clarified and either reference to the 1847 Act removed or this article changed.

**Commented [A51]:** This draft order incorporates section 39 of the 1847 Act which is very similar to this section. Suggest either the incorporation of the 1847 Act should be removed or this article changed

**Commented [A52]:** This section is very similar in meaning and terminology of section 44 of the 1847 Act which has been incorporated into the draft order. Suggest that this should be updated to be more relevant to current harbour operations and the incorporation of the 1847 Act removed. Or remove this section. To keep both creates potential conflict.

deems necessary and take, seize or arrest the vessel and the tackle and cargo thereof, and if the charge remains unpaid for 7 days after the seizure or arrestment may cause any of the matters so seized or arrested to be sold, and the surplus (if any) of the proceeds of sale over the amount of the charge and over the expenses of taking, keeping, appraising and selling the matters aforesaid shall be paid to the master on demand.

(2) If any dispute arises as to the amount of charge due, or of the expenses of seizure or arrestment by virtue of this article, the Harbour Master may detain the matters so seized or arrested until the amount aforesaid, subject to any costs of the application payable by either party, has been determined upon application to the sheriff.

#### **Security for charges**

34. The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the Harbour or goods on or in Harbour Premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

#### **Liens for charges**

35.—(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect of the amount.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

#### **Refusal to pay charges for landing place, etc.**

36. An officer of the Council may prevent a vessel from using a landing place or any other facilities provided by the Council, if the master of the vessel refuses to pay the charges for such use.

#### **Exemptions from charges**

37.—(1) Except in so far as may be agreed between the Council and the Government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

**Commented [A53]:** This section is very similar in meaning and terminology of section 46 of the 1847 Act which has been incorporated into the draft order. Suggest that this should be updated to be more relevant to current harbour operations and the incorporation of the 1847 Act removed. Or remove this section. To keep both creates potential conflict.

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at the Harbour Premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the Harbour without mooring or making use of any facilities provided by the Council.

#### **Conditions as to payment of charges**

**38.**—(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### **PART IV MISCELLANEOUS**

##### **Reserve funds**

**39.**—(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the Harbour Undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the Harbour Undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

(a) in making good to the general fund any deficiency at any time arising in the income of the Council from the Harbour Undertaking;

(b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the Harbour Undertaking;

(c) in defraying any expenditure in connection with the Harbour Undertaking for which capital is properly applicable or in providing money for repayment of loans;

(d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the Harbour Undertaking; or

(e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the Harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the Harbour Undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

#### **Saving for Commissioners of Northern Lighthouses**

40. Nothing in this Order shall prejudice or derogate from any of the rights, duties, or privileges of the Commissioners of Northern Lighthouses.

#### **Saving for CMAL and Ferry Operator**

41.—(1) Nothing in this order shall prejudice or derogate from any of the rights, duties, or privileges of CMAL in connection with its functions as harbour authority in respect of the Railway Pier.

**Commented [A54]:** CMAL request that these sections (39(4)&39(5)) are removed, as we would like to be satisfied that any conservancy charges to be paid at Oban is to be used exclusively for Oban.

(2) Where any exercise by the Council of its powers under article 4 (power to maintain etc. the existing works), article 8 (power to dredge), article 18 (general directions) or article 27 (power to make byelaws) is likely to impact materially on the regular operations of CMAL or the Ferry Operator within the Harbour Limits in connection with the operation of the Relevant Ferry Services, the Council shall, prior to exercising such powers, consult with CMAL and the Ferry Operator and shall have due regard to any representations made by CMAL and/or the Ferry Operator.

(2) Except in the case of an emergency, special directions issued under article 20 (special directions to vessels) shall not apply to any ferry operated by the Ferry Operator in connection with the Relevant Ferry Services.

**Commented [A55]:** Suggest these should apply to all harbour users as they are to regulate the safety of navigation in the harbour

(3) No ship, passenger or goods dues shall be levied by the Council in respect of any vessel, or any passengers or goods, on any vessel, which enters the Harbour to take access to, and egress from, the Railway Pier but the Council shall be entitled to levy ships, passengers and goods dues in respect of any vessel that (except in the case of emergency)—

**Commented [A56]:** CMAL consider it reasonable that a conservancy fee should be paid, however this needs discussion and agreement. Refer to comments on article 39 (4). This section (3) does not consider conservancy fees. Some Harbour Authorities incorporate it within berthing dues. This needs to be clarified with the Council

(a) anchors or moors in the Harbour; or

(b) otherwise uses any of the Harbour Premises,

prior to, or after, any use of the Railway Pier.

#### **Crown rights**

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, Council or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government department having management of that land or (as the case may be) the relevant person; or

(c) belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department without the consent in writing of that Government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

#### **Repeal**

43. The enactment mentioned in the first and second columns of schedule 2 is repealed to the extent specified in the third column of that schedule.

**Commented [A57]:** Schedule 2 covers the harbour map, clarification is required.

SCHEDULE 1 – HARBOUR LIMITS

**Commented [A58]:** Full details are required for review and comment by CMAL

**Commented [A59]:** To be completed



SCHEDULE 2 – HARBOUR MAP

**Commented [A60]:** Full details are required for review and comment by CMAL. In addition, CMAL would require the operational land to be clearly identified.

SCHEDULE 3 – REPEALS and REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
[ ]	Oban Harbour Order 1862	Articles [ ]
[ ]	Oban Harbour Order 1864	Articles [ ]
[ ]	Piers and Harbour Orders Confirmation (No.5) Act, 1896	Whole Act in so far as applicable to the Harbour

#### EXPLANATORY NOTE

This Order updates the existing legislation for Oban Harbour in line with the current needs of the Harbour Authority and Oban Harbour users from the date it comes into force. This Order also repeals those parts of the Oban Harbour Order 1862, the Oban Harbour Order 1864, the Oban Harbour Order 1896 and the Piers and Harbour Orders Confirmation (No.5) Act, 1896 which are no longer relevant.

***Also attached are copies of The Lochboisdale and Gasay Port(Harbour Empowerment) Order 2016 and The Caledonian Maritime Assets (East Loch Tarbert) Harbour Revision Order 2019, which we reference in our comments.***

## Calmac Comments

In short, we've nothing significant to add to CMALs comments, at this point, other than:

- "5. The Council may employ and appoint a Harbour Master" – Our Marine Team felt that 'may' is too loose and would prefer to see that the council 'will' or 'shall' appoint a HM and that such a HM will be appropriately qualified and experienced, at least to National Occupational Standards for such a role. However, CMAL have also highlighted this and suggested a link to the 1847 Act.
- "6.—(1) The Council may improve, maintain, regulate, manage, mark and light the Harbour and provide harbour facilities therein." – Our Marine Team again felt that 'may' was potentially too loose in this situation and could be 'will' or 'shall'.
- "41.—(1) Nothing in this order shall prejudice or derogate..." – typo 'Nothing'

Our main concern, in terms of the ferry services protected provisions, seems to have been covered in CMALs response so that's fine.

Draft – July 2022

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SCOTTISH STATUTORY INSTRUMENTS

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202[ ] No. [ ]

**HARBOURS, DOCKS, PIERS AND FERRIES**

The Argyll and Bute Council (Oban) Harbour Revision Order 202[ ]

*Made* 202[ ]

*Coming into force* 202[ ]

The Scottish Ministers (the “Ministers”) make the following Order in exercise of the powers conferred by section 14(1), (2A) and (3) of the Harbours Act 1964<sup>(20)</sup> and all other powers enabling Ministers to do so.

In accordance with section 14(1) of that Act, this Order is made in relation to a harbour which is being improved, maintained or managed by a harbour authority in the exercise and performance of statutory powers and duties, for achieving objects specified in Schedule 2 to that Act<sup>21</sup>.

In accordance with section 14(2) of the Act—

- (a) this Order is made following a written application to Ministers by Argyll and Bute Council (“the Council”) being the Council engaged in improving, maintaining or managing the Harbour; and
- (b) except in so far this Order is made for achieving objects mentioned in section 14(2A) of the Act, Ministers are satisfied that the making of this order is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner.

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<sup>(20)</sup> 1964 c.40; section 14 was relevantly amended by the Transport Act 1981 (c.56), schedule 6, paragraphs 2, 3, 4(1) and 14 and schedule 12 and the Transport and Works Act 1992 (c.42), schedule 3, paragraph 1. See sections 14(7) and 57(1) of the Harbours Act 1964 for the definitions of “the appropriate Minister” and “the Minister”. The functions of the Minister of the Crown were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

<sup>(21)</sup> Schedule 2 was relevantly amended by the Transport and Works Act 1992 (c.42), Schedule 3, paragraph 9.

In accordance with section 14(2A) of that Act, the objects for achieving which this Order is made include repealing superseded, obsolete or otherwise unnecessary statutory provisions of local application affecting the Harbour.

[Notice has been published by the Council in accordance with the requirements of paragraph 10 of Schedule 3 of that Act<sup>22</sup>. No objections to the application have been made.]

[In accordance with paragraph 19(2) of that Schedule<sup>23</sup>, Ministers have decided to make this Order in the form of the draft submitted to them.]

## PART I PRELIMINARY

### Citation and commencement

1. This Order may be cited as the Argyll & Bute Council (Oban) Harbour Revision Order [202x] and comes into force on the day after the day on which it was made.

### Interpretation

2. In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847<sup>24</sup>;

"CMAL" means Caledonian Maritime Assets Limited, a company incorporated in Scotland with registered number SC001854 and having its registered office at Municipal Buildings, Fore Street, Port Glasgow, Renfrewshire, PA14 5EQ;

"the Council" means Argyll and Bute Council;

"Ferry Operator" means the operator (if any), from time to time, of the Clyde and Hebrides Ferry Services on behalf of the Scottish Ministers;

"general direction" means a direction given by the Council under article 18;

**Commented [A61]:** This HRO in NLB view should include a recognition that the Council is the LLA for its area. Also remaining silent on existing NLB Aton leave the Council open to them being transferred at some time in the future under MSA 1995 powers

**Commented [A62]:** Should this have a successor clause?

<sup>(22)</sup> Paragraph 10 of Schedule 3 was substituted by S.I. 1999/3445 and is amended by the Transport and Works (Scotland) Act 2007 (asp 8), section 25(5)(b) and (c).

<sup>(23)</sup> Paragraph 19(2) of Schedule 3 was substituted by S.I. 1999/3445.

<sup>24</sup> 1847 c.27.

“government department” includes any part of, or any member of the staff of, the Scottish Administration which shall have the same meaning as in section 126(6) of the Scotland Act 1998;

“Harbour” means the harbour at Oban comprised within the Harbour Limits;

"Harbour Limits" means the limits of the Harbour as described in article 4 and Schedule 1 to this Order and shown on the Harbour Map;

"Harbour Map" means the map referred to in article 4, and forming Schedule 2 to this Order;

“Harbour Master” means any person appointed as such by the Council and includes that person’s deputies and assistants and any other person for the time being authorised by the Council to act, either generally or for a specific purpose, in the capacity of Harbour Master;

“Harbour Premises” means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises from time to time vested in or occupied or administered by the Council as part of the Harbour Undertaking, including the existing works which are all situated within the Harbour Limits;

“Harbour Undertaking” means the Harbour Undertaking of the Council at Oban;

**Commented [A63]:** Definition for Harbour users or other consultative bodies would be appropriate.

“land” includes land covered by water, any interest in land and any servitude or right in, to or over land;

“master” in relation to a vessel means any person for the time being having or taking the command, charge or management of the vessel;

“mooring” includes any buoy, pile, post, chain, pillar, jetty for use as an appurtenance to a dwelling or like apparatus or structure used for the mooring of vessels;

"Railway Pier" means the quays, berths, piers, pontoons, moorings, landing places, and all other works, land, buildings and other structures and premises at Oban within the limits prescribed by section 14 of the Scottish Transport Group (Oban Quay) Order Confirmation Act 1974;

“Relevant Ferry Services” means any services associated with the delivery of the Clyde and Hebrides Ferry Services, or any ferry services as may succeed the Clyde and Hebrides Ferry Services, on behalf of the Scottish Ministers;

“relevant person” in relation to any property, rights or interests to which section 90B(5) of the Scotland Act 1998 applies means the person who manages that property, or those rights and interests;

“special direction” means a direction given by the Harbour Master under article 20;

“vessel” means a ship, boat, or craft of any description and includes any other thing constructed or adapted for floating, or hovering, on or being submersed in water (whether permanently or temporarily).

#### **Incorporation of the Harbours, Docks, and Piers Clauses Act 1847**

3.—(1) Sections 1 to 4, 33 to 35, 37 to 39, 42 to 46, 51, 54, 55, 58, 63 to 65 and 74 of the 1847 Act are incorporated with this Order subject to the modifications stated in paragraphs (2) to (4).

(2) In construing the provisions of the 1847 Act as incorporated with this Order—

(a) the expression “the special Act” means this Order, the expression “the undertakers” means the Council and the expression “the harbour, dock, or pier” shall mean the Harbour; and

(b) for the definition of the word “vessel” in section 3 (*interpretations in this and the special Act*) there shall be substituted the definition of that word in article 2;

(c) section 63 shall be read and have effect as if for the words from “be liable to” to the end of the section there were substituted the words “be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale”

(d) section 65 (Harbour Master may remove vessel for purpose of repairing harbour or dock if the master neglects or refuses to do so) shall have effect subject to the omission of the words from “Provided always” to the end of the section.

#### **PART II - POWERS**

##### **Harbour jurisdiction**

4.—(1) The Council shall exercise jurisdiction as a harbour authority within the meaning of section 57 of the Harbours Act 1964 within the area described in schedule 1 of this Order, and shown on the Harbour Map together with the Harbour Premises as shown on the Harbour Map.



(2) In the event of any discrepancy between the boundaries of the Harbour as described in schedule 1 of this Order and the boundaries shown on the Harbour Map, the description shall prevail.

**Commented [A64]:** Boundaries to include an area around the lighthouse pier as per protected provisions proposal

#### **Harbour Master**

5. The Council may employ and appoint a Harbour Master.

#### **General powers and duties in respect of the Harbour**

6.—(1) The Council may improve, maintain, regulate, manage, mark and light the Harbour and provide harbour facilities therein.

(2) For these purposes and without prejudice to the generality of paragraph (1) the Council may construct, alter, demolish and reconstruct structures and works in the Harbour, subject to having all necessary consents and the rights over any land required.

(3) This article is without prejudice to any powers of the Council under or by virtue of any other enactment (including any other provisions within this Order).

#### **Powers with respect to land, buildings, harbour facilities etc.**

7.—(1) The Council may for such price and upon such terms and conditions and subject to such restrictions and for such period as it thinks fit sell, lease, exchange or otherwise dispose of any land, building or harbour facilities belonging to it which is no longer required by the Council for the purposes of the Harbour.

(2) The Council may for the purposes of the Harbour Undertaking manage, use or develop land belonging to it as it thinks fit.

#### **Power to dredge**

8.—(1) The Council may from time to time deepen, widen, dredge, scour, cleanse, alter and improve the bed and foreshore of the Harbour and the seaward approaches thereto.

(2) The Council may use, appropriate or dispose of any material (other than any wreck within the meaning of Part IX of the Merchant Shipping Act 1995<sup>25</sup>) from time to time dredged or removed by it from the Harbour.

(3) No dredged materials shall be deposited—

(a) in contravention of the provisions of any enactment as respects the disposal of waste; or

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<sup>25</sup> 1995 c. 21

(b) in any place below the level of mean high water springs except in such places and in accordance with such conditions and restrictions as may be approved or prescribed by the Scottish Ministers.

#### **Restriction of works and dredging**

9.—(1) No person other than the Council shall in the Harbour—

(a) construct, place, alter, renew or maintain any works; or

(b) dredge,

unless that person has contracted with the Council to do so.

(2) Any person who contravenes this article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) The Council may by notice require a person who contravenes this article to remove, abate or rectify, within a reasonable time specified in the notice, any work, operation or omission to which the contravention relates and to restore the site thereof to its former condition; and if that person fails to comply with the notice the Council may carry out the works so required and may recover from that person as a debt any expenses incurred by it in doing so.

#### **Declaration of draught, etc. of vessel**

10.—(1) The Harbour Master may require the master of a vessel entering, leaving or intending to enter or leave the Harbour to state the length overall and draught maximum of his vessel.

(2) The master of a vessel who in response to a requirement under paragraph (1) without reasonable excuse fails to give the information or gives incorrect information shall, without prejudice to any right of the Council to compensation for loss or damage occasioned thereby, be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) For the purposes of this article “draught” in relation to a hovercraft or hydrofoil vessel means its draught when afloat and not supported on a cushion of air or on foils or by any other means and in relation to a seaplane means its draught when afloat.

#### **Provisions as to damage**

11.—(1) This article applies to any damage caused to any work or property of the Council in the Harbour—

(a) by any person who contravenes any provision of this Order or any other enactment relating to the Harbour; or

(b) by a vessel, whether or not as a result of any contravention of any such provision.

(2) Where damage to which this article applies has occurred, the Council may detain any vessel which caused the damage, and any other property belonging to or in charge of the person who caused the damage, or belonging to that person's employers, until the cost of the damage has been paid or until reasonable security has been given to the Council.

(3) The owner of any vessel causing damage to which this article applies and the master (if it was through his intentional act or failure to act that the damage was done) shall be liable for the cost of the damage.

(4) This article does not affect—

(a) any right of the owner or master of a vessel to recover the cost of damage from any person whose act, or failure to act, gave rise to the damage;

(b) any right of the Council under any other enactment, agreement or rule of law; or

(c) the criminal liability of any person under any provision of this Order, or any byelaw made in relation to the Harbour by the Council.

#### **Obstruction of Harbour Master, etc.**

**12.** Any person who intentionally obstructs the Harbour Master or any other person carrying out duties under this Order or any enactment relating to the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Boarding of vessels**

**13.** The Harbour Master may enter and inspect a vessel in the Harbour, subject to producing his authority where requested—

(a) for the purposes of any enactment relating to the Council or of any byelaw of the Council, including the enforcement thereof; or

(b) to prevent or extinguish fire,

but, except in an emergency, no entry shall be made under this article without prior written notice first having been given to the owner or the person appearing to have charge of the vessel, at least 24 hours in advance; and the written notice shall have annexed to it a copy of this article.

#### **Vessels adrift**

**14.—(1)** The owner or master of a vessel adrift in the Harbour shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(2) It shall be a defence for the owner or master of a vessel charged with an offence under paragraph (1) to prove that the vessel did not become adrift as the result of any neglect or default on the part of that person.

**Power to appropriate parts of the Harbour, etc.**

**15.—(1)** Subject to paragraph (3) but notwithstanding anything else in this or any other statutory provision of local application, the Council may from time to time set apart and appropriate any part of the Harbour or any land, works, buildings, machinery, equipment or other property within the Harbour owned or managed by the Council for the exclusive, partial or preferential use or accommodation of any particular trade, activity, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such reasonable charges and to such terms, conditions and regulations as the Council may think fit.

(2) No person or vessel shall, otherwise than in accordance with the setting apart or appropriation, make use of any part of the Harbour, land, works, buildings, machinery, equipment or other property so set apart or appropriated without the consent of the Harbour Master, and—

(a) the Harbour Master may order any person or vessel making use thereof without such consent to leave or be removed from the site of the contravention; and

(b) the provisions of section 58 of the 1847 Act shall extend and apply with appropriate modifications in relation to any such vessel.

(3) In exercising its powers to appropriate or set apart any part of the Harbour under paragraph (1), the Council shall have regard to the facilitation of—

(a) the public right of navigation in the Harbour; and

(b) any public rights of way affecting the Harbour,

such that the Council shall not restrict such rights more than is necessary for the purpose for which the part of the Harbour is appropriated or set apart.

**Power to enter into arrangements to provide supplies**

**16.** The Council may make arrangements for the purpose of providing and supplying fuel, ice and such other requirements as may be made available to vessels using the Harbour and in respect of the supply, laying down and maintaining of pipelines, storage tanks, plants, equipment and other apparatus and the execution of ancillary and necessary works for that purpose within the Harbour.

## Moorings

17.—(1) The Council may provide, place, lay down, maintain, renew, use or remove such moorings, buoys and similar apparatus within the Harbour as it considers necessary or desirable for the convenience of vessels.

(2) The Council may demand, receive and recover in respect of any vessel using any of the moorings provided by the Council under paragraph (1), or moored to land owned or leased by the Council, such reasonable charges as the Council may from time to time prescribe.

(3) The Council may compound with any person with respect to the payment of the charges prescribed under paragraph (2).

(4) The Council may from time to time grant a licence to any person to place, lay down, maintain, renew and use moorings, buoys and similar apparatus for vessels in the Harbour.

(5) Any person who, without reasonable excuse, places, lays down, maintains, renews or uses a mooring, buoy or similar apparatus for vessels within the Harbour except under and in accordance with the terms and conditions of a licence granted under this article, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) Any licence granted under paragraph (4) shall be valid only for a period of one year commencing with the date on which it takes effect.

(7) The Council may charge a reasonable fee for the grant of a licence under this article.

## General directions

18.—(1) The Council may after consultation with the Royal Yachting Association and Harbour users give directions for any of the following purposes:—

- (a) designating areas, routes or fairways in the Harbour which vessels are to use, or refrain from using for movement, mooring or anchorage;
- (b) securing that vessels move only at certain times or during certain periods;
- (c) securing that vessels make use of descriptions of aids to navigation specified in the direction;
- (d) prohibiting entry into or navigation within any of the main fairways during any temporary obstruction thereof;
- (e) requiring the master of a vessel to give to the Harbour Master information relating to the vessel reasonably required by the Harbour Master;

**Commented [A65]:** NLB is not clear why RYA have a greater presence than statutory stakeholders in this HRO or indeed the local interested harbour users. There are other leisure bodies in Scotland and perhaps this should be a more general wider leisure engagement.

(f) prohibiting entry into or movement in the Harbour by vessels at times of poor visibility due to the weather or to the presence of dust or smoke provided that no such direction shall prevent the entry into the Harbour or the approaches of any vessel seeking refuge from stress of weather;

(g) regulating the speed of vessels within the Harbour;

(h) specifying the precautions to be taken in respect of apparatus, machinery and equipment; and

(i) prohibiting or restricting use of fires or lights.

(2) A general direction under this article may apply—

(a) to all vessels or to a class of vessels designated, or for which the designation is provided for, in the direction;

(b) to the whole of the Harbour or to a part designated, or for which the designation is provided for, in the direction; or

(c) at all times or at times designated, or for which the designation is provided for, in the direction,

and every direction under this article shall specify the extent of its application in relation to the matters referred to in sub-paragraphs (a), (b) and (c).

(3) The Council may after consultation with the Royal Yachting Association and Harbour users revoke or amend any general direction.

#### **Publication of general directions**

**19.**—(1) Except in an emergency, the Council shall publish notice of the giving of a general direction and of any amendment or revocation of a general direction as soon as practicable once in a newspaper circulating in the locality of the Harbour, and, if the notice relates to the giving or amendment of a general direction, the notice shall state a place at which copies of the general direction or the amended general direction (as the case may be) may be inspected and bought, and the price of the general direction or amended general direction (as the case may be).

(2) In an emergency, notice of the giving of a general direction or of the amendment or revocation of a general direction may be given in any manner considered by the Council to be appropriate.

#### **Special directions to vessels**

**20.**—(1) The Harbour Master may give a special direction under this article—

(a) requiring a vessel anywhere within the Harbour to comply with a requirement made in or under a general direction;

(b) regulating the time at which, the manner in which and speed at which a vessel shall enter into, go out of, move within or lie in or at the Harbour;

(c) for securing that a vessel move only at certain times or during certain periods;

(d) prohibiting the mooring of a vessel in any particular part or parts of the Harbour;

(e) regulating or requiring the movement, mooring or unmooring of a vessel;

(f) regulating the manner in which a vessel takes in or discharges (from ship to shore or shore to ship or ship to ship) passengers, cargo, fuel, water, ship's stores or ballast in the Harbour; and

(g) requiring the removal from any part of the Harbour of a vessel if—

(i) it is on fire;

(ii) it is in such condition as to be liable to become immobilised or waterlogged, or to sink, or to constitute a danger to life (including wildlife) or property;

(iii) it is making an unlawful use of the Harbour or interfering with the reasonable use or enjoyment of the Harbour by other vessels or persons;

(iv) its removal is necessary to enable maintenance or repair work to be carried out at Harbour Premises or to premises adjacent thereto.

(2) A special direction may be given in any manner considered by the Harbour Master to be appropriate.

(3) The Harbour Master may revoke or amend a special direction.

#### **Failure to comply with special directions**

**21.** The master of a vessel who fails without reasonable excuse to comply with a special direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

#### **Enforcement of special directions**

**22.**—(1) Without prejudice to any other remedy available to the Council, if a special direction is not complied with within a reasonable time, the Harbour Master may, where practicable, put persons on board the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction.

(2) If there is no-one on board a vessel to comply with a special direction, the Harbour Master may proceed as if the direction had been given and not complied with; but the Harbour Master shall not do so unless, after reasonable enquiry has been made, the master of the vessel cannot be found.

(3) Reasonable expenses incurred in the exercise of the powers conferred by this article shall be recoverable by the Council from the owner of the vessel as if they were a charge of the Council in respect of the vessel.

#### **Master's responsibility in relation to directions**

**23.** The giving of a general direction or a special direction shall not diminish or in any other way affect the responsibility of the master of the vessel to which the direction is given in relation to that vessel, persons on board, its cargo or any other person or property.

#### **Removal of obstructions other than vessels, vehicles or wreck**

**24.—**(1) The Council may remove anything which is causing or likely to become an obstruction or impediment to the proper use of any part of the Harbour other than—

(a) a vessel or vehicle; or

(b) a wreck within the meaning of Part IX of the Merchant Shipping Act 1995.

(2) If anything removed by the Council under paragraph (1) is known to the Council to be, or is so marked as to be readily identifiable as, the property of any person, the Council shall within one month of its coming into its custody give notice, in accordance with paragraph (6), to that person and if possession of the thing is not retaken within the period specified in, and in accordance with the terms of, the notice it shall at the end of that period become the property of the Council.

(3) If the ownership of anything removed by the Council under paragraph (1) is not so known or marked and the ownership cannot within 3 months of its coming into the custody of the Council be proved to the Council's reasonable satisfaction, it shall become the property of the Council.

(4) The Council may at such time and in such manner as it thinks fit dispose of anything which is of a perishable or obnoxious nature or the custody of which involves unreasonable expense or inconvenience notwithstanding that it has not vested in the Council under this article, and if it is sold the proceeds of sale shall be applied by the Council in payment of the expenses incurred by it under this article in relation to the thing, and any balance—

(a) shall be paid to any person who within 3 months from the time when the thing came into custody of the Council proves to its reasonable satisfaction that such person was the owner thereof at that time; or

**Commented [A66]:** We suggest Use wreck removal convention act definition as this would give the Harbour master broader coverage than the narrow MSA definition.



(b) if within the said period no person proves ownership at the said time, shall become the property of the Council.

(5) If anything removed under this article—

(a) is sold by the Council and the proceeds of sale are insufficient to reimburse it for the amount of the expenses incurred in the exercise of its powers of removal; or

(b) is unsaleable,

the Council may recover the deficiency or the whole of the expenses, as the case may be, from the person who was the owner when the thing removed came into the custody of the Council or who was the owner at the time of its abandonment or loss.

(6) A notice given under paragraph (2) shall specify the thing removed and state that upon proof of ownership to the reasonable satisfaction of the Council, possession may be retaken at a place specified in the notice within the time specified therein, being not less than 14 days after the date when the notice is served.

(7) The Council shall not under the powers of this article move anything placed or constructed by any person under the provisions of any enactment or of a consent or licence.

#### **Removal of vehicles**

**25.—**(1) If a vehicle is left—

(a) in any part of the Harbour Premises where the parking of vehicles is prohibited by notice erected by the Council; or

(b) in any place within the Harbour Premises where it is likely to obstruct or interfere with the use of the Harbour Premises,

the Council may cause it to be removed to a place of safe custody.

(2) Any such notice as is referred to in paragraph (1)(b) shall be conspicuously posted in or in proximity to the place to which it relates.

(3) Where the Council in exercise of the powers of this article causes a vehicle to be removed, the reasonable expenses of and incidental to its removal and safe custody shall be recoverable by the Council from the person responsible.

(4) If the Council in exercise of the powers of this article causes a vehicle to be removed, it shall, if and as soon as it is reasonably practicable to do so, send to the person for the time being registered as the owner of the vehicle for the purposes of the Road Vehicles (Registration and Licensing) Regulations 2002 [\(8\)](#), at that person's

last known address or registered address, or the address where the vehicle is ordinarily kept, notice that the Council has exercised the powers of this article and of the place to which the vehicle has been removed.

(5) A notice stating the general effect of paragraph (1) shall be displayed in a prominent position at each place where a road accessible to vehicles enters any part of the Harbour Premises, and shall be endorsed on any tickets issued to persons leaving vehicles at the Harbour Premises.

(6) In paragraph (3), “person responsible”, in relation to a vehicle, means—

(a) the owner of the vehicle at the time when it was put in the place from which it was so removed, unless the owner of the vehicle shows that the vehicle was put there without that person’s knowledge or involvement;

(b) any person by whom it was put in that place; or

(c) any person convicted of an offence under section 2 of the Refuse Disposal (Amenity) Act 1978(9) in consequence of the putting of the vehicle in that place.

(7) This article does not apply to any part of any public road within the Harbour Premises.

#### **Power to remove goods**

**26.**—(1) If any goods are left on or in any part of the Harbour Premises the Council may require the owner of the goods to remove them; and if the goods are not so removed within six hours after such requirement the Council may cause them to be removed to the Council or any other public warehouse or store; and such removal shall be carried out at the expense and risk of the owner.

(2) Notwithstanding such removal on behalf of the Council, the goods shall be subject to a lien for the cost of removal, and for any charges payable to the Council by the owner in respect of the goods under Part III (Charges) of this Order.

(3) In this article, “goods” includes equipment of any description.

#### **Powers to make byelaws, etc.**

**27.**—(1) The Council may from time to time make byelaws for the efficient management and regulation of the Harbour.

(2) Without prejudice to the generality of paragraph (1), byelaws made under this article may provide for—

(a) regulating the use, operation and superintendence of the Harbour and the docks, berths, wharves, quays, piers, jetties, landing places, equipment, works and conveniences (including moorings);

**Commented [A67]:** NLB believe that though inferred in the control of vessels a clear statement in this section about establishing a local port radio service would be wise. Also the carriage of AIS by all vessels underway/making way would be beneficial. Recognising slip launched leisure craft may be impractical to police. s

- (b) regulating the admission to, and the movement within, and the departure of vessels from, the Harbour, or the removal of vessels and for the good order and government of vessels whilst within the Harbour;
- (c) regulating the shipping and unshipping, landing, warehousing, stowing, depositing and removing of goods, including marine creatures of any type, within the Harbour;
- (c) regulating the berthing and mooring of vessels within the Harbour and their speed and the use of tugs within the Harbour;
- (d) preventing damage or injury to any vessels, goods, vehicles, plant, machinery, property or persons within the Harbour;
- (e) regulating the conduct of all persons in the Harbour not being members of a police force or officers or servants of the Crown whilst in the exercise of their duties;
- (f) regulating the placing and maintenance of moorings within the Harbour;
- (g) preventing and removing obstructions or impediments within the Harbour;
- (h) regulating the use of ferries within the Harbour;
- (i) regulating in the Harbour the use of yachts, sailing boats, sailboards, rowing boats, pleasure craft and other small craft;
- (j) regulating the use of personal water craft in the Harbour;
- (k) regulating the holding of regattas and other public events in the Harbour;
- (l) regulating or prohibiting the activities in the Harbour of divers, surfers, water skiers and other persons engaged in similar recreational pursuits but not so as to prohibit the use for navigation of the vessels referred to in sub-paragraph (i);
- (m) prohibiting persons in or entering the Harbour, or any part thereof, from smoking therein;
- (n) regulating the movement and parking of vehicles within the Harbour;
- (o) regulating the exercise of the powers vested in the Harbour Master;
- (p) making the carrying out of specified Harbour operations, or the conduct of persons in the Harbour, subject to the approval (with or without conditions), control or direction of the Harbour Master, and for authorising the Harbour Master to take such action as may be reasonably required in default of compliance with any such condition, control or direction;

(q) regulating the hours during which any gates, entrances or outlets to or from the Harbour or any part of the Harbour shall be open;

(r) prohibiting or regulating the discharge or deposits of ballast, ashes, refuse, rubbish or other material (including any polluting liquid) into or upon the Harbour;

(s) regulating the use of cranes, weighing machines, weights and measures belonging to the Council, and the duties and conduct of weighers and meters employed by the Council;

(t) regulating the holding of regattas and other public events in the Harbour;

(u) regulating or preventing the use of fires and lights within the Harbour;

(v) the conservation of the natural beauty of all or any part of the Harbour or of any of the fauna, flora or geological or physiographical features in the Harbour and all other natural features; and

(w) the conservation, preservation or redevelopment of any buildings, plant or other artificial features of the Harbour of historic or architectural significance.

(3) For the purposes of sub-paragraph (2)(j) above “personal water craft” means any watercraft (not being a structure which by reason of its shape provides buoyancy for the carriage of persons or goods) propelled by a jet engine or other mechanical means of propulsion and steered either—

(a) by means of a handlebar operated linkage system (with or without a rudder at the stern); or

(b) by the person or persons riding the craft using their body weight for the purpose; or

(c) by a combination of the methods referred to respectively in sub-paragraphs (a) and (b).

(4) Byelaws made under this article may—

(a) provide for imposing upon persons found guilty on summary conviction of offending against them, or against any condition, requirement or direction imposed, made or given thereunder on summary conviction, fines not exceeding level 3 in the standard scale;

(b) relate to the whole of the Harbour or Harbour Premises, or to any part thereof; or

(c) make different provisions for different parts of the Harbour or Harbour Premises, or in relation to different classes of vessels.

(5) Existing byelaws in respect of the Harbour will remain in place as if they had been made under this order.

#### **Confirmation of byelaws**

**28.—**(1) Byelaws made by the Council under this Order shall not come into operation until they have been confirmed by the Scottish Ministers.

(2) At least one month before an application for confirmation of byelaws is made by the Council to the Scottish Ministers, notice of the intention to apply for confirmation and of the place at which and times during which a copy of the byelaws shall be open to inspection shall be published as follows—

(a) once in the Edinburgh Gazette; and

(b) once in each of two successive weeks in a newspaper circulating in the area in which the Harbour is situated.

(3) During a period of at least one month before application is made for confirmation of the byelaws, a copy of the byelaws shall be kept by the Council at the principal office of the Council and at the Harbour office and will be available for inspection without payment.

(4) The Council shall supply a copy of the byelaws or of part of the byelaws to a person who shall apply for it.

(5) During the period of one month after the date of first publication of any notice required by paragraph (2), any person may make in writing to the Scottish Ministers any objection to or representation respecting the byelaws to which the notice relates.

(6) Subject to paragraph (7), the Scottish Ministers may confirm the byelaws in the form submitted to them with such modifications as they think fit or may refuse to confirm them.

(7) Where the Scottish Ministers propose to make a modification that appears to them to substantially affect the character of the byelaw they shall inform the Council and require it to take any steps the Scottish Ministers consider necessary for informing persons likely to be concerned with the modification, and the Scottish Ministers shall not make decision under paragraph (6) until such period has elapsed as the Scottish Ministers think reasonable for consideration of, and comment upon, the proposed modification by the Council and by other persons who have been informed of it.

(8) In making a decision under paragraph (6) the Scottish Ministers shall have regard to any comments that may have been received under paragraph (7).

(9) A copy of the byelaws when confirmed shall be printed and deposited by the Council at the principal office of the Council and shall at all reasonable hours be open to public inspection without payment, and a copy of the byelaws shall on application be furnished to any person on request.

### PART III CHARGES

#### **Charges other than ship, passenger and goods dues**

**29.—**(1) The Council may demand, take and recover in respect of any dracone or floating dock, crane, rig, drilling rig or floating plant, which is not a ship as defined by section 57 of the Harbours Act 1964, entering, using or leaving the Harbour such reasonable charges as it thinks fit, and sections 30 and 31 of that Act shall with any necessary modifications apply to the charges authorised by this paragraph as they apply to ship, passenger and goods dues.

(2) The Council may make such reasonable charges for services and facilities provided by it or on its behalf in relation to the Harbour as it may from time to time determine.

(3) In paragraph (2) “charges” does not include ship, passenger and goods dues as defined by section 57 of the Harbours Act 1964.

#### **Liability for charges**

**30.—**(1) Charges payable to the Council on or in respect of—

(a) a vessel, shall be payable by the owner or master of the vessel;

(b) goods, shall be payable by the owner, consignee or shipper of the goods.

(2) Where a charge payable to the Council may be recovered from more than one person the persons from whom it is recoverable shall be jointly and severally liable.

#### **Power to grant exemptions, rebates, etc., in respect of charges**

**31.—**(1) The Council may confer total or partial exemptions from, allow rebates to or make compositions with any person with respect to charges, and may vary or extinguish any such exemption or composition.

(2) Nothing in section 30 of the Harbours Act 1964 shall require the Council to include in the list of ship, passenger and goods dues kept at the Harbour office, as required by subsection (1) of that section, charges reduced by a rebate allowed on, or subject to a compounding arrangement in respect of, a due included in the said list.

#### **Account of goods**

**32.—**(1) When goods are to be unshipped within the Harbour the master of the vessel containing them shall—

(a) within 24 hours of the arrival of the vessel within the Harbour, deliver to the Harbour Master the name of the consignee of the goods and a copy of the bill of lading or manifest or, if part only of the cargo is to be unshipped, a sufficient account in writing of the goods to be unshipped;

(b) if required so to do by the Harbour Master, give to the Harbour Master 24 hours' notice of the time at which any such goods are to be unshipped.

(2) Before any person ships goods on board of a vessel within the Harbour, that person shall give to the Harbour Master a true account signed by that person, of the kinds, quantities and weights of the goods.

(3) If any difference arises between the Harbour Master and a master or the owner of goods or consignee concerning the weight or quantities of goods in respect of which charges may be payable, the Harbour Master may cause the goods to be weighed or measured and may detain a vessel containing such goods until the goods have been so weighed or measured.

(4) Any person who contravenes or fails to comply with the provisions of paragraph (1)(a) or (2), or with any requirement made under paragraph (1)(b), shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Recovery of charges by seizure, etc.**

**33.**—(1) If default is made in the payment of any charge in respect of a vessel or its cargo the Harbour Master may, on producing if so required his or her Council, board the vessel with such assistance as the Harbour Master deems necessary and take, seize or arrest the vessel and the tackle and cargo thereof, and if the charge remains unpaid for 7 days after the seizure or arrestment may cause any of the matters so seized or arrested to be sold, and the surplus (if any) of the proceeds of sale over the amount of the charge and over the expenses of taking, keeping, appraising and selling the matters aforesaid shall be paid to the master on demand.

(2) If any dispute arises as to the amount of charge due, or of the expenses of seizure or arrestment by virtue of this article, the Harbour Master may detain the matters so seized or arrested until the amount aforesaid, subject to any costs of the application payable by either party, has been determined upon application to the sheriff.

#### **Security for charges**

**34.** The Council may require a person who incurs or is about to incur a charge to deposit with it, or to guarantee, such sum of money as is, in the opinion of the Council, reasonable having regard to the amount or probable amount of the charge, and where such a person fails to deposit or guarantee the sum of money required the Council may detain the vessel in the Harbour or goods on or in Harbour Premises, in respect of which the charge has been or will be incurred, until the requirement has been complied with or the charge paid.

#### **Liens for charges**

**35.**—(1) A person who by agreement with the Council collects charges on its behalf and who pays or gives security for the payment of charges on goods in that person's possession shall have a lien on those goods for the amount paid or security given in respect of the amount.

(2) A wharfinger or carrier who is not liable for the payment of charges may pay or by agreement with the Council give security for charges on goods in its custody, and in that event it shall have a like lien on the goods for the

amount of those charges as it would have in respect of its charges for safe custody or carriage of the goods, as the case may be.

**Refusal to pay charges for landing place, etc.**

36. An officer of the Council may prevent a vessel from using a landing place or any other facilities provided by the Council, if the master of the vessel refuses to pay the charges for such use.

**Exemptions from charges**

37.—(1) Except in so far as may be agreed between the Council and the Government department or person concerned or as may be specifically laid down by statute, nothing in any enactment authorising the Council to levy charges shall extend to authorise it to levy charges on—

(a) a vessel—

(i) belonging to or in the service of Her Majesty or any member of the Royal Family; or

(ii) in the service of the Commissioners of Customs and Excise and not carrying goods for reward; or

(iii) in the service of the Commissioners of Northern Lighthouses and not carrying goods for reward; or

(iv) belonging to or used by the lifeboat service whilst employed in or in connection with the functions of that service;

(b) the Commissioners of Customs and Excise in respect of a vessel or goods under customs seizure;

(c) troops landed at the Harbour Premises or a person employed by the Secretary of State for Defence while in the execution of his duty;

(d) goods or stores belonging to the Secretary of State for Defence.

(2) Officers of the Department for Transport and of the Scottish Ministers in the execution of their duty shall at all times be exempt from charges in respect of their vessels and otherwise.

(3) This Order shall not extend to subject any person to liability for charges in respect of a vessel which merely passes through the limits of the Harbour without mooring or making use of any facilities provided by the Council.

**Conditions as to payment of charges**



**38.—**(1) Charges shall be payable subject to such terms and conditions as the Council may from time to time specify in its published list of charges.

(2) Without prejudice to the generality of paragraph (1) the terms and conditions may prescribe the time when a charge falls due for payment and may require such information to be given to the Council by the owner or master of a vessel or a person using a service or facility of the Council as the Council may require in connection with the assessment or collection of a charge.

#### PART IV MISCELLANEOUS

##### **Reserve funds**

**39.—**(1) If in respect of any financial year the moneys received by the Council on account of the revenue of the Harbour Undertaking exceed the moneys expended or applied by it in respect thereof, the Council may in respect of that year carry to the credit of a reserve fund in respect of the Harbour Undertaking such a sum as it considers reasonable not exceeding the amount of such excess.

(2) Moneys for the time being standing to the credit of the reserve fund may be invested in any securities in which officers are for the time being authorised to invest moneys including debenture stock or other security created by the Council.

(3) Any reserve fund provided under this article may be applied—

(a) in making good to the general fund any deficiency at any time arising in the income of the Council from the Harbour Undertaking;

(b) in meeting any extraordinary claim or demand at any time arising against the Council in respect of the Harbour Undertaking;

(c) in defraying any expenditure in connection with the Harbour Undertaking for which capital is properly applicable or in providing money for repayment of loans;

(d) in defraying expenditure to be incurred from time to time in repairing, maintaining, replacing and renewing buildings, works, plant, vessels, equipment or articles forming part of the Harbour Undertaking; or

(e) for any purpose which in the opinion of the Council is desirable in the interests of securing the improvement, maintenance or management of the Harbour in an efficient and economical manner or of facilitating the efficient and economic transport of goods or passengers by sea to or from the Harbour.

(4) The Council may exercise the powers of this article so as to provide a combined reserve fund in respect both of the Harbour Undertaking and any other similar undertaking of the Council, and the foregoing provisions of this article as to a reserve fund shall apply with all necessary modifications to any such combined reserve fund.

(5) Any monies held in any combined reserve fund referred to in paragraph 4 may be applied for the purposes of any of the Council's harbour undertakings.

#### **Saving for Commissioners of Northern Lighthouses**

40. Nothing in this Order shall prejudice or derogate from any of the rights, duties, or privileges of the Commissioners of Northern Lighthouses.

#### **Saving for CMAL and Ferry Operator**

41.—(1) Nothing in this order shall prejudice or derogate from any of the rights, duties, or privileges of CMAL in connection with its functions as harbour authority in respect of the Railway Pier.

(2) Where any exercise by the Council of its powers under article 4 (power to maintain etc. the existing works), article 8 (power to dredge), article 18 (general directions) or article 27 (power to make byelaws) is likely to impact materially on the regular operations of CMAL or the Ferry Operator within the Harbour Limits in connection with the operation of the Relevant Ferry Services, the Council shall, prior to exercising such powers, consult with CMAL and the Ferry Operator and shall have due regard to any representations made by CMAL and/or the Ferry Operator.

(2) Except in the case of an emergency, special directions issued under article 20 (special directions to vessels) shall not apply to any ferry operated by the Ferry Operator in connection with the Relevant Ferry Services.

(3) No ship, passenger or goods dues shall be levied by the Council in respect of any vessel, or any passengers or goods, on any vessel, which enters the Harbour to take access to, and egress from, the Railway Pier but the Council shall be entitled to levy ships, passengers and goods dues in respect of any vessel that (except in the case of emergency)—

(a) anchors or moors in the Harbour; or

(b) otherwise uses any of the Harbour Premises,

prior to, or after, any use of the Railway Pier.

#### **Crown rights**

42.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, Council or exemption of the Crown and in particular and without prejudice to that generality, nothing in this Order authorises the Council

**Commented [A68]:** NLB wish to see more specific protections for the operations at Oban base as per the protected provisions proposal. Previously submitted to ensure unhindered operations including helicopter operations from vessels in the bay etc

to take, use, enter upon or in any manner interfere with any land or any rights of whatsoever description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the Government department having management of that land or (as the case may be) the relevant person; or

(c) belonging to a Government department or held in trust for Her Majesty for the purposes of a Government department without the consent in writing of that Government department.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions; and shall be deemed to have been given in writing where it is sent electronically.

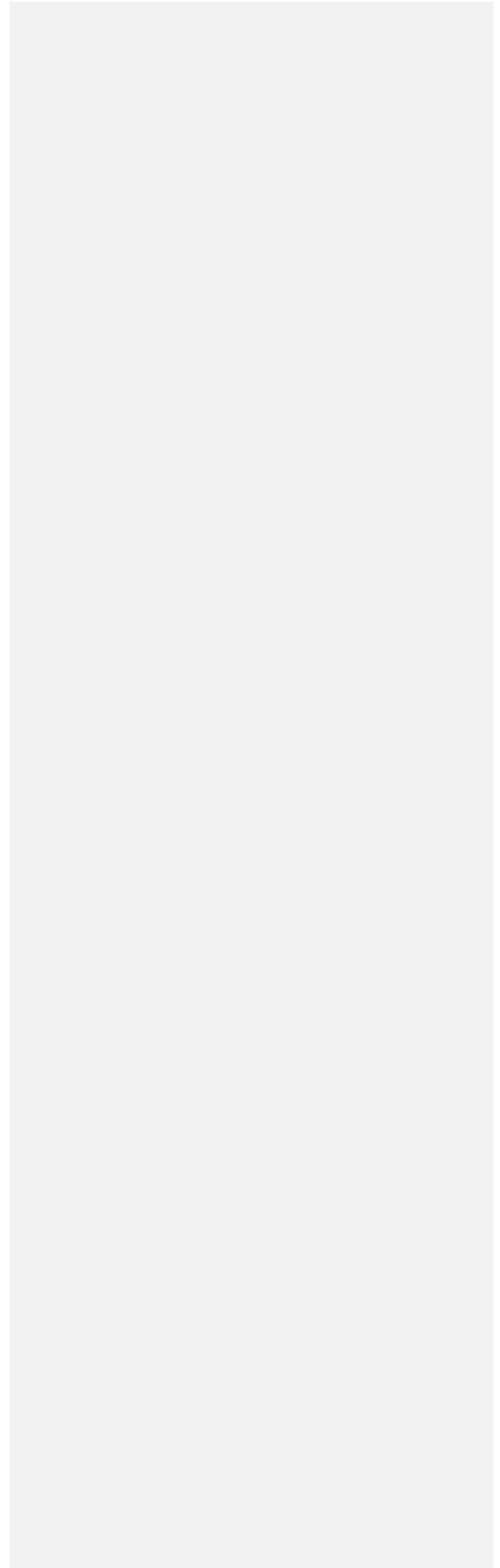
#### **Repeal**

**43.** The enactment mentioned in the first and second columns of schedule 2 is repealed to the extent specified in the third column of that schedule.

SCHEDULE 1 – HARBOUR LIMITS

**Commented [A69]:** To be completed

SCHEDULE 2 – HARBOUR MAP



SCHEDULE 3 – REPEALS and REVOCATIONS

<i>Number</i>	<i>Short title</i>	<i>Extent and time of repeal or revocation</i>
[ ]	Oban Harbour Order 1862	Articles [ ]
[ ]	Oban Harbour Order 1864	Articles [ ]
[ ]	Piers and Harbour Orders Confirmation (No.5) Act, 1896	Whole Act in so far as applicable to the Harbour

#### EXPLANATORY NOTE

This Order updates the existing legislation for Oban Harbour in line with the current needs of the Harbour Authority and Oban Harbour users from the date it comes into force. This Order also repeals those parts of the Oban Harbour Order 1862, the Oban Harbour Order 1864, the Oban Harbour Order 1896 and the Piers and Harbour Orders Confirmation (No.5) Act, 1896 which are no longer relevant.

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## OCHDA Comments

### Oban Municipal Harbour: Draft Harbour Revision Order (date draft issued 26/8/22) OCHDA comments

Existing section heading	OCHDA comments	Suggested wording
<b>Interpretation</b> (Article 2)	Requires to include sea-planes & float planes	
<b>Incorporation of the Harbour, Docks and Piers Clauses Act 1847</b> (Article 3)	Section 52 of the Act (Powers of the Harbour Master) must be incorporated in the HRO.	Add "52" to the list of Sections to be incorporated from the H,D&P Clauses Act in Article 3-(1).
<b>Harbour area</b> (Article 4), as drawn on first draft	N entrance boundary difficult to draw on chart & assess vessel position. Suggest an arc. Kerrera Marina included – is this intentional? S entrance: accept Council's proposal but note that the Navigational Risk Assessment may lead to amendment.	Excluding the area known as Ardantrove Bay for the operation of Kerrera Marina.
<b>Harbour master &amp; powers</b> (Article 11 (1)(b)) & (Article 11 (2) – Provisions as to damage	1b) Damage not caused by negligence should not be included. Council & owners should have suitable 'no-fault' insurance 2) Requires to clarify that this only applies when the damage occurred while the vessel owner is acting in the course of their employment	
<b>Harbour master &amp; powers</b> (Article 13 (a)) – Boarding of vessels	Enforcement of enactments or bye-laws should only relate to those which arise from the Harbour Undertaking.	Add after "byelaw of the Council", " <i>where such enactment or byelaw relates to the Harbour Undertaking</i> "

<b>Moorings</b> (Article 17)	Process for hand-over of tenancies between CES and A&BC requires to be detailed. Council power to lay new moorings requires consent from CES.	
<b>General directions</b> (Article 18 (1))	Harbour directions should always be focussed on improving safety or ease of navigation.	<i>"The Council may.....give directions, in order to promote or secure conditions conducive to the ease, convenience or safety of navigation or the safety of persons, by:-"</i>
<b>Powers to make byelaws</b>	Byelaws should be confined to prohibiting specified	Delete <i>"and for authorising the harbour</i>
(Article 27 (2)(p)) <b>Note:</b> 27 (2) (t) duplicates 27 (2) (k)	behaviour rather than a general assumption of power to act as the HM regards as necessary.	<i>master to take such actions as may reasonably be required in default of compliance with any such condition, control or direction."</i>
<b>Powers to make byelaws</b> (Article 27 (3))	Definition of 'personal watercraft' in this article should be based on Government Recreational Craft Regulations (2017)	<i>"personal watercraft" means a watercraft intended for sports and leisure purposes of less than 4 metres in hull length which uses a propulsion engine having a water jet pump as its primary source of propulsion and designed to be operated by a person or persons sitting, standing or kneeling on, rather than within the confines of, a hull;</i>
<b>Charges</b> (Article 29)	No specific mention is made to ship, passenger and goods dues ( <i>sometimes called Harbour Dues or Conservancy Charges</i> ) for vessels using the Harbour. All applicable vessels should be expected to contribute to the infrastructure, maintenance and management of the Harbour by means of these dues.	In accordance with Section 26 of the Harbours Act 1964.

<p><b>Reserve funds</b> (Article 39)</p>	<p>Article 39 (4) and (5) allow that the Council can use Reserve Funds generated in Oban to support other similar activity in Argyll &amp; Bute. Since Oban Harbour is the busiest harbour operated by the Council this is likely to be adopted routinely. In order to maintain transparency there should be a clear expectation regarding publishing of annual accounts, as required by Section 42 of the Harbours Act 1964.</p>	
<p><b>Saving for CMAL &amp; Ferry Operator</b> (Article 41) <b>Note:</b> numbering incorrect, assume 41 1,2,3 &amp; 4</p>	<p><b>Article 41 (3)</b> provides a full exemption for ferries to have to adhere to any Special Directions issued by the Harbour Master. This is considered to be wholly unacceptable to the safe management of the harbour by the Harbour Master.</p> <p><b>Article 41(4)</b> specifically excludes the levying of harbour</p>	<p>Delete Articles 41 (3) &amp; 41 (4)</p>
	<p>dues on vessels accessing to/egressing from the Railway Pier (i.e. ferries). All Harbour users should be expected to contribute to the cost of navigating the waters of Oban Harbour though fees may be discounted or waived under specific circumstances.</p>	

<p><b>Incorporation of earlier legislation</b></p>	<p><b>Article 43 – Repeals:</b> Sections 38-42 of the Callander and Oban Railway Act 1878, and Oban Piers Order (1896) which established the still-extant Oban Harbour Authority and vested powers held to this day by CMAL at the Railway Pier, will have to be repealed, amended or otherwise taken into consideration.</p> <p><b>Purpose and Effect notes:</b> These will be required for all powers sought through the HRO. (Transport Scotland guidance states “<i>Drafts should be accompanied by purpose and effect notes which detail the reason for seeking each power and the legal basis for such a power to be granted with reference to schedule 2 of the 1964 Act.</i>”</p>	
<p><b>Sections to be added</b></p>		
<p>Governance arrangements: Oban Harbour Board &amp; Advisory Body</p>	<p>Existing Council-wide Harbour Board is neither sufficient nor appropriate. Proposed re-instatement of defunct Port User Group does not properly fulfil PMSC and Guidance on Good Governance recommendations on consultation.</p>	<p>Suggest new Articles 4 &amp; 5, inserted above “Jurisdictions”. See detailed proposals for Oban Harbour Board and local Advisory Body, below.</p>

**Oban Harbour Board & Advisory Body (new sections)**

Establishment of Harbour Board

4.1 Within 12 weeks of this Order coming into force the Council shall establish a Board of between 8 and 10 members constituted and appointed as provided for within this Order and in accordance with Section 57 of the Local Government (Scotland) Act 1973, and they and their successors from time to time appointed under this Order shall be called the “Harbour Board”.

Composition of the Board

4.2. – (1) From the establishment of the Board, its composition shall be as follows;

(a) five elected members of the Council;

(b) a minimum of three independent lay members, made up of one representative from Oban Community Council, one from OCHDA acting on behalf of the Oban Bay Stakeholders Group and one from the Harbour Advisory Committee (q.v. 5, below).

(2) The Council shall secure, so far as reasonably practicable, that the persons appointed by it under paragraph (1) will, between them, have special knowledge, experience and ability in a broad and complementary range of matters relevant to the efficient, effective and economic discharge by them of the Board's functions.

(3) All members of the Board appointed under paragraph (1) shall be bound by the Code of Conduct for Argyll and Bute Council members and co-opted members (or replacement thereof) in force at that time.

Non-voting Co-Opted members

4.3. From the establishment of the Board, the Board may from time to time co-opt no more than three persons to attend Board meetings as additional (non-voting) attendees for a fixed term of up to 24 months.

Terms of office for Board members

4.4 – (1) The first appointments to the Board made by the Council under article 7(1)(a) shall be made within 12 weeks of this Order coming into force, with the terms of the members appointed continuing until the next annual meeting of the Council.

(2) At the annual meeting of the Council referred to in paragraph (1) the terms of the members appointed to the Board by the Council in accordance with article 7(1)(a) will be until the end of the current administrative period of the Council.

(3) All subsequent appointments made to the Board by the Council in accordance with article 7(1)(a) will be made for a term of office until the end of the administrative period of the Council during which the appointment takes place.

(4) The first appointments made to the Board in accordance with article 7(1)(b) shall be made within 12 weeks of this Order coming into force.

(5) Those appointed under article 7(1)(b) shall initially serve for the following terms; (a) one or two independent lay members for a term of one year, (b) two independent lay members for a term of two years, and (c) two independent lay members for a term of three years.

(6) All subsequent appointments made under article 7(1)(b) unless the appointment is made to fill a casual vacancy shall be made for a period of three years with a maximum period of three consecutive terms of three years being allowed (the third term only in exceptional circumstances following public advertisement of the role and a competitive appointment process).

#### Casual vacancies

4.5. – (1) A casual vacancy arising in the office of a duly appointed member of the Board must, unless it is not reasonably practicable to do so, be filled by the appointment of a Board member by the Council in accordance with the requirements of articles 7 and 9.

(2) If a member of the Board appointed under 7(1)(a) ceases to be a member of the Council or is suspended or disqualified from being a councillor, the Council must appoint a replacement member at its next meeting, whose term shall run until the end of the administrative period of the Council during which the appointment takes place.

(3) A member of the Board appointed to fill a casual vacancy under this article shall, if appointed under article 7(1)(b) hold office as a member of the Board for the remainder of the term of the member of the Board in whose place that person has been appointed.

#### **Meetings of the Board**

4.6. Meetings of the Board shall take place at least 4 times per year.

#### Establishment of Advisory Body

5. – (1) The Council must establish a harbour advisory body which the Council must consult on all matters substantially affecting the management, maintenance, improvement, conservation, protection or regulation of the harbour.

(2) The Council must make arrangements for the advisory body to meet not less than three times a year.

(3) The Council must take into consideration within a reasonable period any matter, recommendation or representation which may from time to time be referred or made to it by such an advisory body whether or not that advisory body has been consulted by the Council on the matter, recommendation or representation so referred or made.

(4) Any advisory body established pursuant to this article must consist of such number or numbers of persons appointed by the Council as the Council from time to time considers appropriate, but should consist of at least 50% elected members, who may also be members of the Harbour Board but should be members drawn from the Oban Lorn and the Isles Area Committee.

(5) Appointments to any such advisory body must be made by the Council in accordance with a scheme prepared by it for that purpose and the scheme must provide for the appointment of persons who, in the opinion of the Council, are representative of persons having an interest in the functioning of the harbour.

- (6) Any such advisory body may determine its own quorum and procedure and must appoint a chairperson.
- (7) An individual member of any such advisory body may hold office for the period of three years from the date of their appointment and at the end of that period will be eligible for reappointment.
- (8) A member of any such advisory body may resign their office at any time by notice in writing given to the Council.

